



**U.S. Department of Justice  
Office of the Inspector General  
Evaluation and Inspections Division**

# **Review of ATF's Explosives Inspection Program**

**April 2013**

**I-2013-004**

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## EXECUTIVE DIGEST

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### INTRODUCTION

The Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) conducts qualification inspections of applicants for new explosives licenses or permits, as well as compliance inspections of current license and permit holders (“licensees”) to ensure that they are following federal explosives laws and regulations.<sup>1</sup> Since 2003, the *Safe Explosives Act* (SEA) has required ATF to inspect every licensee’s explosives storage facilities (“SEA compliance inspection”) at least once every 3 years as part of the license and permit renewal process.<sup>2</sup> The purpose of this Office of the Inspector General (OIG) review was to examine how effectively and efficiently ATF conducts these inspections and how it uses the information gathered during the inspections to identify trends in the explosives industry that would allow it to improve its inspection program.

According to ATF policy, SEA compliance inspections are conducted in the 12-month period preceding a license’s or permit’s expiration date. Consequently, the number of these inspections ATF conducts each fiscal year depends on how many licenses and permits are due for renewal.<sup>3</sup> In October 2011, there were approximately 10,600 active explosives licenses in the United States. In fiscal year (FY) 2011, ATF conducted approximately 3,400 SEA compliance inspections. These inspections are conducted by a staff of 624 Industry Operations Investigators assigned to the 25 ATF Field Divisions nationwide. In addition to conducting explosives qualification and compliance inspections, these same Investigators conduct qualification and compliance inspections of individuals and companies seeking federal firearms licenses. These Investigators also conduct outreach to both the explosives and firearms industries.

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<sup>1</sup> Explosives are defined by 18 U.S.C. § 841 as any chemical mixture or device whose purpose is to explode and include items such as dynamite, black powder, detonators, and igniters.

<sup>2</sup> Pub. L. No. 107-296, Title XI, Subtitle C of the *Homeland Security Act of 2002*. Although the *Safe Explosives Act* was signed in 2002, it went into effect in 2003.

<sup>3</sup> Under federal explosives laws, all persons who wish to manufacture, import, or distribute explosives in commerce must acquire a federal explosives license, and those who wish to obtain explosives must acquire a federal explosives permit. In this report, we use the term “license” to refer to both licenses and permits.

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## RESULTS IN BRIEF

From FY 2006 through FY 2011, ATF generally conducted its required explosives inspections and had procedures in place to ensure it did so consistently. Specifically:

- ATF conducted at least 94 percent of the compliance inspections required by the SEA, but due to limitations of ATF's data systems, we were unable to determine whether ATF conducted the remaining 6 percent of required inspections;
- ATF has put in place standards that require thorough inspections and controls to ensure those standards are met;
- ATF cited fewer violations over time; and
- ATF has a framework to guide its field divisions in responding to non-compliant explosives licensees.

However, we also found several areas where ATF needs to improve its performance.

ATF does not consistently document whether the inspections it conducted meet the SEA mandate: We found that ATF potentially overcounts the number of explosives inspections that meet the SEA mandate because it counts inspections without regard to whether those inspections included a complete inspection of storage facilities. ATF is also unable to determine whether it is complying with its policy to inspect each explosives licensee during the 12-month period before the license expires.

ATF does not effectively use its inspection results data to identify trends in the explosives industry and target resources to address these trends: We found that ATF reviews explosives inspection results on a case-by-case basis, but it does not capture important inspection results in its electronic databases or use those databases to identify and assess broader trends in the explosives industry. This approach prevents ATF from answering basic questions that could assist it in conducting inspections more effectively, reduces ATF's ability to monitor the field divisions' progress in completing inspections, and precludes ATF from using inspection results data to help it assess whether resources should be reallocated between field divisions. We also found that ATF's manual processes for reconciling inspection data with licensee data are inefficient and time consuming. In addition, ATF's two data systems are not connected, preventing the automatic sharing of information that could show the connections between licenses issued and inspections conducted if individual entities' license numbers change over time.

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ATF does not ensure that buyers with expired licenses do not purchase explosives without authorization during the 45-day regulatory grace period for license renewals: Licensees that are in the process of renewing their licenses are authorized to continue buying explosives for up to 45 days following the license expiration date.<sup>4</sup> While explosives sellers have an obligation to check the status of each buyer's license, sellers do not have a reliable method to confirm that a buyer is seeking renewal and is within the 45-day grace period. ATF issues Letters of Authorization when licensees in the renewal process request them but not otherwise, making it difficult for sellers to determine whether buyers with expired licenses and no Letters of Authorization are in the renewal process or simply have no valid licenses.

ATF does not conduct in-person inspections of all explosives end-users that require them: While ATF conducts in-person inspections of licensees that possess most kinds of explosives, ATF conducts inspections by telephone of end-users that use only explosive pest control devices (EPCD). Moreover, to determine if an end-user qualifies for inspection by telephone, Investigators rely on the end-user's representation that it uses only EPCDs, and Investigators do not always verify those statements independently.

ATF does not have an effective way to enforce compliance with out-of-business requirements: While explosive licensees that go out of business are required to turn over their explosives records to either ATF or a successor licensee, fewer than half of the licensees that went out of business between FY 2006 and FY 2011 did so. Moreover, the administrative actions that ATF would normally take against non-compliant licensees have no impact on companies that have already gone out of business and given up their licenses.<sup>5</sup> Further, ATF has no efficient way to determine which out-of-business licensees have records that need to be submitted.

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<sup>4</sup> 27 C.F.R. § 555.103(b)(1)(i) states that this regulatory grace period does not apply if the seller knows or has reason to believe that the buyer's authority to continue explosives operations has been terminated.

<sup>5</sup> Firearms licensees have a statutory obligation to turn in 20 years of firearms records to ATF when they go out of business and may face penalties that range from a fine to 5 years in prison, or both, if they fail to do so. See 18 U.S.C. §§ 923(g)(4) and 924(a)(1)(D).

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## RECOMMENDATIONS

In this report, we make seven recommendations to improve ATF's ability to monitor its progress toward completing SEA-mandated inspections, to better position ATF to identify and respond to risks or trends emerging in its explosives inspection program, to make it easier for explosives sellers to recognize buyers that are authorized to continue purchasing explosives after their licenses expire, to ensure that EPCD users are not able to obtain other explosives without in-person inspections, and to improve its collection of records from out-of-business companies. We recommend that ATF:

1. Ensure that the SEA mandate is fulfilled by tracking whether compliance inspections include a full examination of storage facilities;
2. Ensure that Investigators document the end date of the on-site portion of each inspection in N-Spect, ATF's inspection tracking system;
3. Identify inspection data that would be useful for analysis of its explosives licensee inspection program, and of trends in the explosives industry, and develop methods for regularly collecting and analyzing this information;
4. Develop a method for tracking entities regardless of changing license numbers, such as assigning an identifying number to each licensee that remains consistent for the duration of the licensee's explosives operations;
5. Create a reliable, consistent, and efficient mechanism for explosives sellers to verify a buyer's authorization to purchase explosives, such as by providing a Letter of Authorization to every buyer with an expired license that files a timely renewal application;
6. Conduct in-person inspections of all EPCD users or obtain the authority to issue licenses and permits valid only for EPCDs; and
7. Explore ways to obtain more out-of-business records within ATF's current legal authority.

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## BACKGROUND

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The Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) inspects federal explosives licensees to ensure that they are following federal explosives laws and regulations.<sup>6</sup> As of October 2011, there were approximately 10,600 approved federal explosives licensees in the United States. These licensees used about 3 million metric tons of explosives in 2011 for purposes that ranged from mining, quarrying, and construction to manufacturing air bags and conducting medical procedures that fracture kidney and gall stones.

Since 2003, the *Safe Explosives Act* (SEA) has required ATF to inspect every licensee's explosives storage magazines at least once every 3 years.<sup>7</sup> The purpose of this Office of the Inspector General (OIG) review was to examine how effectively and efficiently ATF conducts these inspections and how it uses the information gathered during the inspections to identify trends in the explosives industry that would allow it to improve its inspection program.

In fiscal year (FY) 2011, a staff of approximately 624 Industry Operations Investigators in ATF's 25 field divisions conducted approximately 3,400 SEA compliance inspections. These Investigators also are responsible for inspecting more than 123,500 federally licensed firearms dealers and conducting outreach to the firearms and explosives industries by, for example, attending industry association meetings or holding ATF open houses. The sections below briefly describe federal explosives regulations and ATF's explosives inspections.

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<sup>6</sup> Anyone wishing to manufacture, import, or distribute explosives must acquire a federal explosives license, while those wishing to obtain explosives must acquire a federal explosives permit. In this report, we use the term "license" to refer to both licenses and permits.

<sup>7</sup> Pub. L. No. 107-296, Title XI, Subtitle C of the *Homeland Security Act of 2002*. The *Safe Explosives Act* went into effect in 2003. Enforcing federal explosives laws has been part of ATF's mission since the enactment of the *Organized Crime Control Act of 1970* (Pub. L. No. 91-452, codified at 18 U.S.C. §§ 841-848). The *Organized Crime Control Act* defined the term "explosives" as "any chemical compound mixture, or device, the primary or common purpose of which is to function by explosion." 18 U.S.C. § 841(d). This definition includes dynamite, black powder, detonators, and igniters.

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## **Federal Explosives Regulations**

The federal explosives regulations, 27 C.F.R. Part 555, last updated in 2007, implement the explosives laws codified at 18 U.S.C. §§ 841-848, including the provisions of the SEA. The regulations describe the requirements for the proper storage of explosives, including the proper types, construction, maintenance, security, and placement of magazines. Explosives must be stored in one of five types of magazines, which may provide permanent or mobile storage, as well as indoor or outdoor storage. The regulations on magazine placement, called the Tables of Distances, set minimum distances between a magazine and roads, railways, buildings, and other magazines, based on the weight and type of explosives stored. ATF inspects a licensee's storage facilities to determine compliance with these regulations.

The regulations require licensees to keep records pertaining to explosives stored on the business's premise for 5 years from the date a transaction occurs or until discontinuation of the business. These records must include information regarding the business's acquisition and disposition of explosives; any explosives thefts or losses; and daily summaries of explosives added to, removed from, and remaining in the magazines. The regulations also require that licensees notify ATF if they go out of business. Every business that is either discontinued or succeeded by a new owner must notify ATF and return its license or permit to ATF's Federal Explosives Licensing Center. Businesses that are succeeded by another business must provide the successor business with their explosives records. Businesses that do not have a successor must ship their explosives records to ATF's Out-of-Business Records Center so that those records are available if ATF needs them as part of an explosives trace.<sup>8</sup>

## **ATF's Explosives Inspections**

The Industry Operations unit of ATF's Office of Field Operations is responsible for inspecting federal explosives licensees. Each year, ATF creates an Industry Operations Operating Plan that identifies headquarters' mandatory inspection initiatives and field division discretionary initiatives. Field divisions must complete all mandatory inspections in their jurisdictions. The field divisions use their remaining

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<sup>8</sup> Tracing is the systemic tracking of explosives from manufacturer to purchaser for the purpose of aiding law enforcement officials in identifying suspects involved in criminal violations, establishing stolen status, and proving ownership. ATF's U.S. Bomb Data Center is responsible for tracing explosives.

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resources to conduct inspections meeting field division discretionary initiatives. Mandatory initiatives include the SEA compliance inspections and qualification inspections of businesses applying for explosives and firearms licenses. Discretionary initiatives include recall inspections of explosives licensees cited for violating laws or regulations during a previous inspection and also firearms licensee compliance inspections. At the beginning of each fiscal year, headquarters sends each field division a list of explosives licensees due for inspection during that fiscal year. The field divisions then schedule the inspections.

ATF uses two separate data systems to assist in managing its explosives inspection program: the Federal Licensing System (FLS) and N-Spect. Both systems predate the SEA's implementation in 2003. FLS has been in use since 2000 and N-Spect since 1999. ATF uses FLS to manage applications for firearms and explosives licenses, the issuance of licenses, and information regarding firearms and explosives manufacturers, importers, dealers, and explosives users. N-Spect is a case management tool that stores inspection data entered by Investigators and managers in the field divisions, including data on violations. ATF tracks information on each violation, including the regulations broken.

Investigators' assignments fall into four main categories of activities within N-Spect – administrative, compliance, general, and qualification – and these categories pertain to firearms, explosives, tobacco, and alcohol work. In this report, we discuss three types of explosives licensee inspections: qualification, compliance, and recall inspections. The sections below describe each type of inspection. (See Appendix I for additional information.)

### Qualification Inspections

ATF inspects all applicants for explosives licenses to determine if they are qualified to enter the industry and to receive, possess, and handle explosives. ATF's Federal Explosives Licensing Center must issue the license or permit within 90 days of receipt of the complete and correct application. An Investigator reviews the results of the Federal Explosives Licensing Center background checks on the applicant's Responsible Persons and Employee Possessors, and identifies and reviews field office files that may be relevant to the new application.<sup>9</sup>

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<sup>9</sup> A Responsible Person is an individual who has the power to direct the management and policies of the applicant pertaining to explosives. An Employee Possessor has actual physical or constructive possession of explosives. The law

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Once on site, the Investigator interviews the applicant, reviews the application, examines documents that provide proof of ownership and control of the business, and verifies that state or local permits have been obtained. The Investigator also determines whether the type and location of storage magazines are appropriate for the amount and type of explosives the applicant intends to use and verifies any contingency (backup) storage the applicant has arranged. Lastly, the Investigator explains mandatory regulations and voluntary security considerations, and provides contact information for the local ATF office. After completing the qualification inspection, the Investigator prepares a report recommending approval or denial of the application. The licensing center will not issue a new license or permit unless the Investigator recommends approval. In FY 2011, ATF conducted 1,105 qualification inspections.

### Compliance Inspections

As part of the license renewal process, ATF conducts a compliance inspection to determine if the licensee is complying with federal laws and regulations, and to detect and prevent the diversion of explosives from legal to illegal commerce. According to ATF's Industry Operations Handbook:

In order to ensure compliance with the requirements of the SEA, a full inspection will be conducted at renewal time. Inspections conducted up to 12 months prior to the renewal date meet this requirement. These inspections will include verification of storage as required by the SEA and all other aspects of a full inspection.

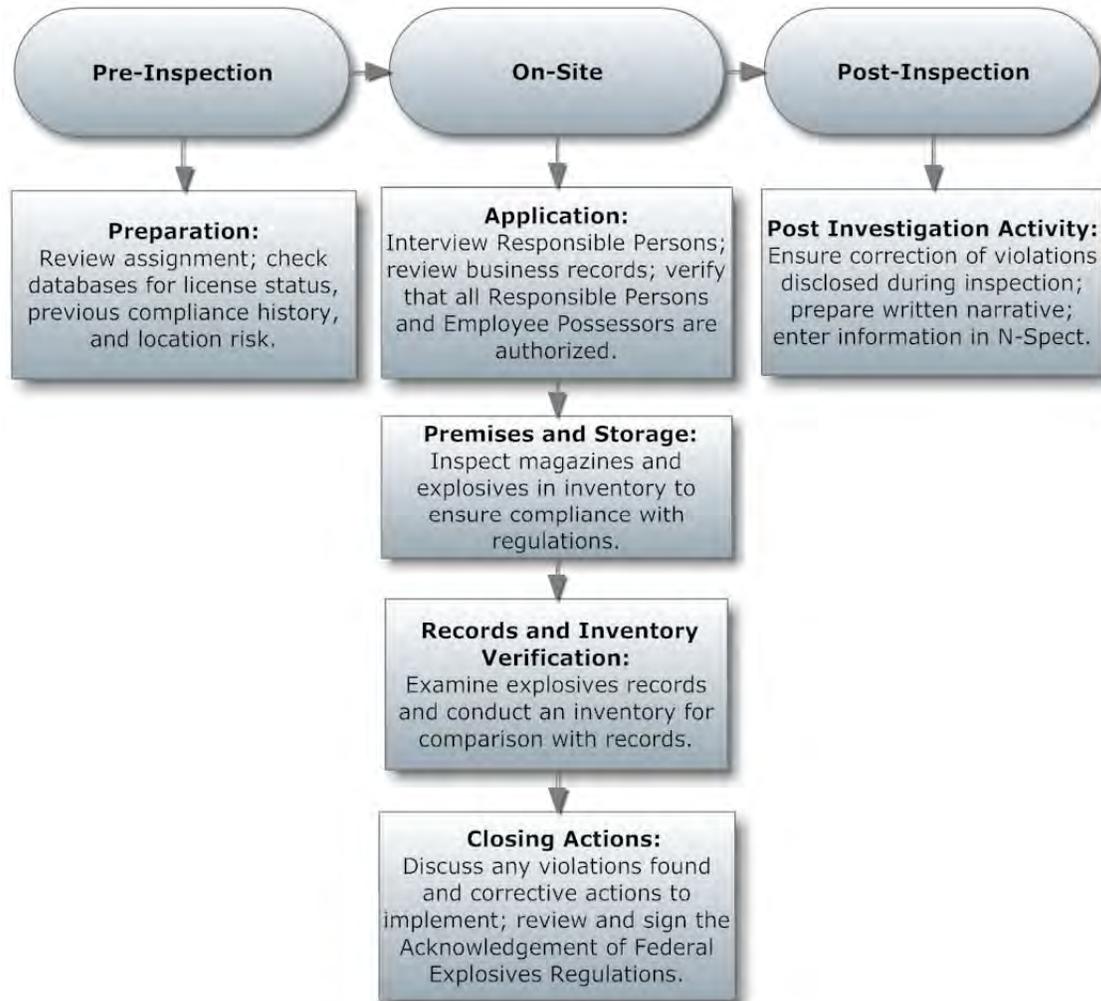
The steps an Investigator follows for a compliance inspection are similar to those for qualification inspections. First, the Investigator reviews the licensee's compliance history in the field office files and queries ATF databases for background information. Next, the Investigator visits the business premises to interview the Responsible Persons and review business records; verify that all Responsible Persons and Employee Possessors have passed ATF background checks; inspect the magazines for construction, maintenance, and compliance with the

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prohibits seven categories of individuals from serving as Responsible Persons or Employee Possessors: (1) convicted felons or people under felony indictment, (2) fugitives, (3) people illegally using or addicted to controlled substances, (4) people who have been adjudicated a mental defective or who have been committed to a mental institution, (5) aliens (with limited exceptions), (6) people dishonorably discharged from the military, and (7) people who have renounced their U.S. citizenship.

Tables of Distances; and conduct an inventory of explosives and compare it with the company’s explosives records. The Investigator holds a closing conference with the licensee to discuss any violations and corrective actions the license holder must take to fix the violations, as well as to review the general requirements of federal explosives regulations. Figure 1 summarizes the compliance inspection process.

**Figure 1: Compliance Inspection Process**



Source: ATF Industry Operations Handbook.

After completing the compliance inspection and ensuring that the licensee has corrected any violations found, the Investigator prepares a report and enters the inspection data into N-Spect. If the inspection found violations, ATF may take administrative actions that include issuing a warning letter, holding a warning conference, or revoking a license. If the violations require some minimal, yet formal, documented action, ATF issues a warning letter to remind a licensee that retention of

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a license or permit is conditional upon compliance with federal laws and regulations. If the violations involve continuing failures despite previously having received a warning letter, ATF holds a warning conference with the licensee. The purpose of the conference is to allow a field supervisor to discuss problems directly with the licensee and to assess the licensee's ability to achieve compliance in the future. ATF may use these two types of actions (warning letter or warning conference) even in cases where violations are not willful.<sup>10</sup> An explosives license or permit may be revoked or a renewal denied if ATF finds that the licensee, according to federal explosives regulations, "is not likely to comply with the law or regulations or is otherwise not eligible to continue operations under his license or permit," after considering the willfulness of the licensee's violations, the impact of these violations on public safety, and the licensee's compliance history.<sup>11</sup> In FY 2011, ATF conducted approximately 3,400 SEA compliance inspections.

### Recall Inspections

Recall inspections are a subcategory of compliance inspections that ATF may conduct if a licensee has received a warning letter or a warning conference as a result of a prior inspection. The purpose of a recall inspection is to check whether the licensee has corrected the violations that were identified in a prior inspection. The steps the Investigator takes during a recall inspection depend on the nature of the prior violations. In FY 2011, ATF conducted approximately 150 recall inspections.

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<sup>10</sup> ATF's Industry Operations Handbook defines willfulness as the "intentional disregard of a known legal duty or plain indifference" to a licensee's legal obligations.

<sup>11</sup> 27 C.F.R. § 555.74 (2007).

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## **PURPOSE, SCOPE, AND METHODOLOGY OF THE OIG REVIEW**

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### **Purpose**

We conducted this review to examine how effectively and efficiently ATF inspects all explosives licensees as required by the SEA and how it uses the information gathered during the inspections to identify trends in the explosives industry that would allow it to improve its inspection program.

### **Scope**

We examined ATF's explosives inspection program, including the process and standards for inspecting explosives licensees and the process for confirming whether all explosives licensees receive mandatory inspections. We examined data from ATF's data systems on 14,600 explosives licenses and permits that were valid between FY 2006 and FY 2011, and data on 51,000 explosives assignments closed between FY 2005 and FY 2011. These assignments included inspections of explosives licensees. (See Appendix I for the types of assignment categories and subcategories.)

### **Methodology**

We conducted fieldwork from September 2011 through June 2012 that included in-person and telephone interviews, analysis of ATF data from sources including FLS and N-Spect, document reviews and analysis, and site visits to ATF headquarters and field offices in Birmingham, Alabama; Denver, Colorado; and Lansdale, Pennsylvania.

### Interviews

We interviewed a total of 57 officials at ATF headquarters and each of the 25 field divisions. These interviews provided information on ATF's goals and priorities for explosives inspections, explosives policies and guidance, ATF headquarters oversight of the field divisions, field division implementation of the program, the steps of the explosives inspection and licensing processes, the process explosives licensees must follow when they cease operations, and the use of explosives licensee records in explosives traces.

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## Data Analyses and Document Reviews

We examined data from ATF's FLS, which tracks all federal firearms and explosives licenses and permits applied for and issued, and ATF's N-Spect, which tracks data on all firearms and explosives inspections conducted. We analyzed explosives licensing data to identify which licenses and permits were active each year between FY 2006 and FY 2011, then compared that information against explosives inspection data between FY 2005 and FY 2011 to determine whether ATF performed SEA compliance inspections of each of those licensees at the time required by the SEA and ATF policy.<sup>12</sup> At ATF headquarters, we observed how ATF reconciles information in its databases by requesting it reconcile a sample we selected of 95 licensees that appeared to have no record of inspections.<sup>13</sup> ATF's employees searched FLS and N-Spect, using identifying information about each licensee to determine whether each one received an inspection. We also analyzed explosives licensing data to determine how often ATF recorded the receipt of records from licensees that had ceased business operations.

In our analyses, we considered "SEA compliance inspections" to be compliance inspections conducted specifically to meet the SEA's triennial inspection mandate.<sup>14</sup> We categorized inspections ATF conducted for other reasons but that appear to have met the requirements of the SEA (because they included a full inspection of storage facilities) as "storage inspections."<sup>15</sup> These inspections include those conducted after accidents or thefts.

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<sup>12</sup> According to ATF's Industry Operations Handbook, "[i]n order to ensure compliance with the requirements of the SEA, a full inspection will be conducted at renewal time. Inspections conducted up to 12 months prior to the renewal date meet this requirement." Due to this policy, 8 percent of the SEA compliance inspections that ATF needed to complete in FY 2006 were actually completed in FY 2005.

<sup>13</sup> The licensees we examined had no record of specific compliance inspections when we expected to identify one. For instance, one licensee had a compliance inspection in FY 2006, but not in FY 2009 when the license was again due for renewal.

<sup>14</sup> ATF labels these inspections as "SEA Full" inspections in its databases. In this report, we use the term "SEA mandate" to describe the requirement that ATF inspect the storage facilities of each explosives licensee every 3 years.

<sup>15</sup> Inspection types that we concluded would meet the storage inspection requirements of the SEA include those categorized as qualification inspections as well as the following ATF subcategories of compliance inspections: Accidental Explosion Investigation, Explosive Pest Control Devices (EPCD), Fireworks Limited, Fireworks Temporary Storage Verification, Investigation Theft or Loss, Non-SEA Full, Non-SEA

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We analyzed explosives compliance inspection data from FY 2006 through FY 2011 to examine ATF's findings of violations, its recommendations for administrative actions, and its assessments of each licensee's overall compliance.<sup>16</sup>

We reviewed ATF policies and guidelines related to the explosives inspection program. These included ATF's Industry Operations Handbook, guidance and policy memoranda, and training materials. We also reviewed ATF budget requests, federal explosives laws and regulations, and pending legislation. We did not independently assess the controls ATF uses to ensure consistency in its inspections or the content of inspection reports.

### Site Visits

We conducted one site visit for planning purposes and selected the Birmingham, Alabama, Field Office at ATF's recommendation. This visit oriented us to ATF's explosives inspection program and helped us identify sources for data and information about the program. We then conducted two additional site visits in Denver, Colorado, and Lansdale, Pennsylvania, based primarily on the number and variety of explosives licenses and permits within the field divisions' territories. There we interviewed ATF staff at all levels to understand how program policies are put into practice in the field and to gather additional documents for analysis. During our Pennsylvania site visit, we also observed an explosives compliance inspection.

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Full Explosives Threat Assessment and Prevention Strategy (ETAPS), Recall Inspection Full Scope, and SEA Full.

We concluded that the following compliance inspections would not have met the storage inspection requirement of the SEA because ATF policy does not require them to include a full storage inspection: Assist ATF Investigation, Assist Law Enforcement, Disposition Emphasis Non-Violent Crime Impact Team (VCIT), Field Division Initiative, Non-SEA Limited, Non-SEA Limited ETAPS, Non-VCIT Limited Scope, Recall Inspection Limited Scope, Southwest Border, and Special Request Other.

<sup>16</sup> We used the FY 2005 inspection data only to assess ATF's ability to meet the SEA mandate.

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## RESULTS OF THE REVIEW

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- **From FY 2006 through FY 2011, ATF conducted at least 94 percent of the compliance inspections required by the SEA, but due to limitations of ATF's data systems we were unable to determine whether ATF conducted the remaining 6 percent of required inspections.**
- **ATF has established standards for inspections and put in place controls to ensure those standards are met.**
- **ATF cited fewer violations over time.**
- **ATF has a framework to guide its field divisions in responding to non-compliant explosives licensees.**
- **ATF's case-by-case approach to its explosives inspection program does not make comprehensive use of inspection data to identify trends in the explosives industry or target its resources to address these trends.**
- **ATF is unable to ensure that no one purchases explosives with expired licenses or without necessary inspections.**
- **ATF does not have an effective way to enforce the regulatory requirements for its collection of the records of explosives licensees that go out of business.**

**ATF conducted the vast majority of the compliance inspections required by the SEA, but due to limitations of ATF's data systems we were unable to determine whether it conducted all of them.**

To achieve the SEA mandate, ATF needed to conduct nearly 19,000 compliance inspections of explosives licensees between FY 2006 and FY 2011, which represents the number of licensees that had possessed their explosives licenses or permits for at least 2 years and were eligible

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for renewal at least once during this timeframe.<sup>17</sup> ATF told us it conducts all of the inspections required by the SEA, which mandates a triennial inspection of a licensee's storage facilities.<sup>18</sup> However, the Deputy Assistant Director for Industry Operations who oversaw ATF's explosives inspection program during our review but retired in 2012 told us that the limitations of ATF's databases made it difficult for ATF to determine how many licensees were inspected.

To determine whether ATF had conducted all of the inspections, we compared license expiration dates in FLS with inspection data in N-Spect. These stand-alone systems pre-date the SEA and do not share data with each other. We determined that ATF conducted inspections that fulfilled the SEA mandate for 94 percent (17,719 of 18,917) of the licensees. These inspections were completed in the year before or the year of the licenses' expiration date and included full examinations of the licensees' explosives storage facilities. We counted an inspection as including a full examination of storage if ATF's definition of the inspection type that was conducted directed Investigators to inspect all of a licensee's explosives storage. ATF inspected most of these licensees (17,432) primarily for the purpose of meeting the SEA mandate, and in this report, we refer to these inspections as SEA compliance inspections.

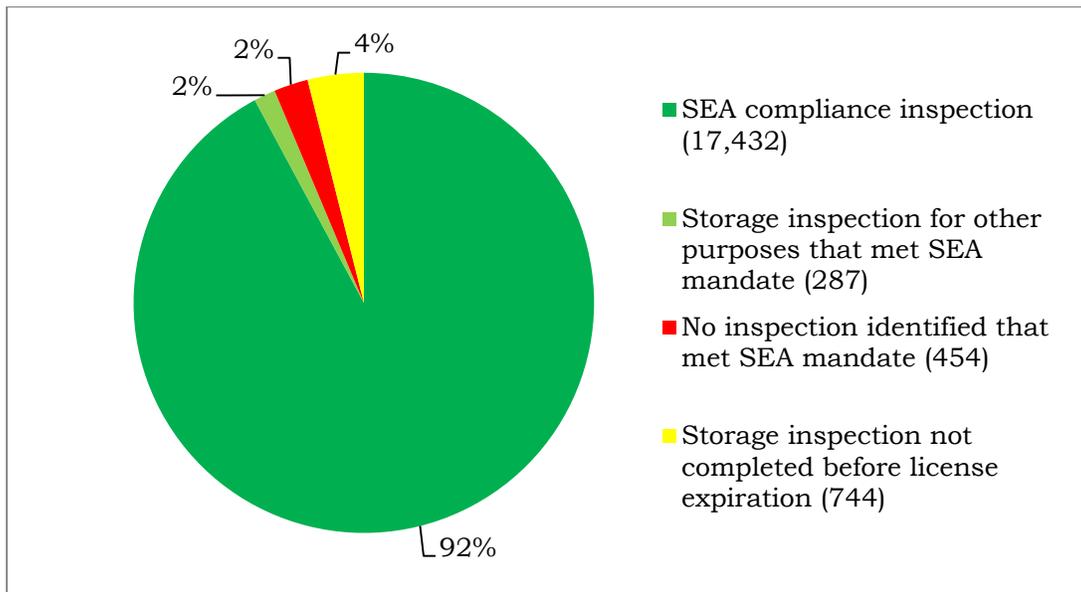
ATF inspected an additional 2 percent of licensees (287) for other purposes that included full examinations of the licensees' explosives storage facilities. These included inspections of temporary fireworks storage during the summer fireworks season and investigations into the theft or loss of explosives material. Because these 287 inspections included full examinations of storage facilities, we counted them as meeting the SEA mandate. We did not include inspections in subcategories that we believed did not meet the SEA mandate because they did not direct Investigators to conduct full examinations of storage facilities or gave Investigators discretion on whether to do so. Below, we describe our findings for the remaining 6 percent (1,198 of 18,917) of the compliance inspections ATF was required to have conducted under the SEA (see Figure 2).

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<sup>17</sup> Because FLS cannot generate lists of licensees due for renewal in past years, ATF provided us with data on 14,587 licenses that were valid at any point between FY 2006 and FY 2011. We used that information to calculate how many inspections ATF needed to conduct each year to achieve the SEA mandate. Some licensees renewed their licenses twice during that timeframe, received two compliance inspections, and therefore are counted twice in our total.

<sup>18</sup> 18 U.S.C. § 843(b)(4)(A).

**Figure 2: Inspections of ATF Explosives Licensees, FY 2006 through FY 2011**



Source: ATF data.

Some licensees may not have received an inspection that fulfilled the SEA mandate.

Two percent (454 of 18,917) of the licensees may not have received inspections that met the SEA mandate for one of two reasons.

First, although ATF headquarters considers all compliance inspections to meet the SEA mandate, ATF's policies do not require all compliance inspections to include the complete inspection of storage facilities as required by the SEA. Therefore, ATF headquarters potentially overcounted the number of compliance inspections during the review period that met the requirements of the SEA. In contrast, we considered an inspection to meet the requirements of the SEA only if the ATF policies governing the specific type of inspection required a full examination of storage facilities in all cases.<sup>19</sup>

Second, database deficiencies prevent ATF from determining whether it has conducted all of the required inspections. The license numbers for some licensees change between the time they are inspected and the time ATF checks to see whether all required inspections have been completed. As a result, the two data sets that ATF attempts to

<sup>19</sup> We identify the inspections that met our criteria in the Methodology section of this report.

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compare do not match, and ATF's initial count of required inspections conducted may not be accurate. In addition, some licensees go out of business before they are due for inspection, but we found that inconsistent updates in the databases make it appear that they still need an inspection and have been overlooked.

During our field work, we selected a sample of 95 licensees who were subject to the SEA mandate but for whom we could not find records of an inspection, and we asked ATF to conduct additional research to determine what had happened in each instance. ATF determined that 36 (38 percent) of the licenses in our sample had received an inspection that met the SEA mandate under different license numbers and the other 59 (62 percent) licensees appeared to have gone out of business before they were due for inspection. ATF officials told us that the field divisions would have known that these licensees did not need an inspection, but ATF headquarters was unable to determine for itself that these licensees did not need an inspection.

ATF completed some inspections after licenses expired.

The remaining 4 percent (744 of 18,917) of the licensees we examined appeared to have been inspected late because their licenses expired before their inspections were closed. ATF policy requires that an SEA compliance inspection be completed within the 12 months preceding a license's expiration date. The SEA requires ATF to inspect each licensee's storage facilities before its license is renewed.<sup>20</sup> Therefore, the former Deputy Assistant Director for Industry Operations told us that he considered the SEA inspection requirement to be fulfilled if the on-site portion of the inspection was completed prior to the license's expiration date, even if the inspection report was not approved and the inspection closed prior to the expiration date.

We found that while ATF tracked the dates on which inspections closed, it did not always track the dates on which licensees received the on-site portions of their inspections. Consequently, although ATF may consider the SEA requirement fulfilled once the on-site portion of the inspection is completed, it cannot always determine whether the on-site portions of the inspections were completed before the licenses expired.

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<sup>20</sup> 18 U.S.C. § 843(b)(4)(A).

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## Conclusion and Recommendations

Our review found that ATF is generally inspecting licensees at or near the time they are due for inspections. However, ATF potentially overcounts the number of these inspections that met the SEA mandate because it counts inspections without regard to whether those inspections included a complete inspection of storage facilities. ATF is also unable to determine whether it is complying with its policy to inspect each explosives licensee during the 12-month period before the license expires because ATF does not consistently document when the on-site portion of all inspections is completed. We therefore recommend that ATF:

1. Ensure that the SEA mandate is fulfilled by tracking whether compliance inspections include a full examination of storage facilities.
2. Ensure that Investigators document the end date of the on-site portion of each inspection in N-Spect.

### **ATF has established standards for inspections and has put in place controls to ensure those standards are met.**

ATF's Industry Operations Handbook establishes mandatory procedures for conducting explosives qualification and compliance inspections to ensure licensees are inspected in a consistent, thorough, and safe manner. The handbook outlines steps that Investigators should take before and during qualification inspections to determine if new applicants understand and intend to follow federal explosives regulations. Similarly, it outlines steps that Investigators should take before and during compliance inspections to determine if licensees are storing explosives safely, maintaining accurate records of their explosives inventory, and minimizing the threat that prohibited persons will be able to access explosives.

ATF also has put in place controls that are designed to ensure that inspections are of consistent quality.<sup>21</sup> Investigators are required to prepare a narrative report for every inspection they conduct, whether they find violations or not. The reports are based on templates that require detailed information about the licensee's type of work, structure of the business, security measures, explosives inventory, records, and

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<sup>21</sup> During this review, we did not independently assess the controls ATF uses to ensure consistency in its inspections or the content of inspection reports.

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storage facilities. Investigators often work in teams on explosives inspections, which allows division of labor and enables them to collaborate on inspection techniques and share best practices. Finally, Area Supervisors are required to review and approve each report before an inspection is considered closed, giving them the opportunity to assess the quality of each inspection, and Directors of Industry Operations, the second-line supervisors, are required to review and approve inspection reports that recommend warning conferences or license revocations.

In addition to identifying regulatory problems, Investigators are required to identify possible violations of criminal law and refer the possible violations to ATF Special Agents. However, we found that ATF has difficulty counting the number of referrals that were made and determining their dispositions. For example, while we estimated, based on our review of ATF's database, that Investigators made 545 referrals to ATF Special Agents between FY 2006 and FY 2011, due to database limitations ATF cannot easily determine the exact number of such referrals.<sup>22</sup> We previously identified this problem in our November 2010 report on ATF's Project Gunrunner, in which we noted that ATF had difficulty both tracking the disposition of criminal referrals from Investigators to Special Agents and obtaining feedback that could help Investigators develop stronger criminal referrals in the future.<sup>23</sup> These problems exist because ATF's enforcement and inspections databases (N-Force and N-Spect) are not integrated, and Special Agents can access only N-Force, while Investigators can access only N-Spect. During the Project Gunrunner review, ATF told us that it had to research each individual referral to determine its outcome. ATF told us that it began requesting funds to improve N-Force and N-Spect in FY 2004, but had not received any money for that purpose as of April 2013.

One of the problems that we identified during the Project Gunrunner review also affects explosives referrals because the same Special Agent and Investigator staffs are using the same systems (N-Force and N-Spect) to track both their explosives referrals and their firearms referrals. In our Project Gunrunner report, we recommended that ATF develop an automated process that enables ATF managers to

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<sup>22</sup> It is not possible to distinguish criminal and non-criminal referrals with certainty because ATF's referral tracking system does not distinguish between criminal and non-criminal referrals. We considered criminal referrals to be those directed to supervisory Special Agents.

<sup>23</sup> U.S. Department of Justice Office of the Inspector General, *Review of ATF's Project Gunrunner*, Evaluation and Inspections Report I-2011-001 (November 2010), 43-45.

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track and evaluate the usefulness of investigative leads provided to firearms trafficking enforcement groups. ATF concurred with that recommendation and, in response, reported to the OIG that it was working on changes to its case management systems that will include improvements in referral tracking. In addition, ATF reported to the OIG during this review that it commissioned a study to identify its requirements for a new integrated system and to develop a better cost estimate for those requirements. The study was completed in August 2012. ATF reported to the OIG that it is currently developing a strategy to implement the study's recommendations, but that development of an upgraded case management system is dependent on the receipt of new funding.

**ATF cited fewer violations over time.**

In FY 2006, ATF conducted 7,202 compliance inspections and issued 4,183 violations – an average of 0.58 violations per inspection. In FY 2011, ATF conducted 4,324 inspections and issued 1,400 violations, an average of 0.32 violations per inspection. As the number of violations decreased, these violations were committed by a smaller share of the licensee population. In FY 2011, 85 percent of explosives compliance inspections had no violations, an increase of 7 percent from 78 percent in FY 2006.

Storage violations of all types declined from 40 percent of violations cited in FY 2006 to 31 percent of violations cited in FY 2011, a trend we considered positive because of the SEA's emphasis on inspecting storage facilities.<sup>24</sup> ATF requires licensees with violations to take corrective action to fix those violations before ATF will close the inspections. Through our discussions with ATF employees, we learned that many storage violations can be corrected with a one-time action. We concluded that the ability to improve long-term compliance with a one-time action may have contributed to the decline in storage violations over time.

Recordkeeping violations of all types accounted for 44 percent of violations cited between FY 2006 and FY 2011. Two of the most commonly cited recordkeeping violations remained the same for the entire 6-year period and accounted for one third of all violations cited during that time. Failure to maintain an accurate Daily Summary of Magazine Transactions represented 23 percent of all violations cited between FY 2006 and FY 2011.<sup>25</sup> This was the most common violation

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<sup>24</sup> 18 U.S.C. § 843(b)(4)(A).

<sup>25</sup> 27 C.F.R. § 555.127.

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among all types of explosives licensees. To remain in compliance, licensees must maintain a written record of the quantity of explosives added to and removed from a magazine each day, along with the total quantity remaining on hand at the end of the day. Further, licensees must maintain a separate Daily Summary for each magazine (for example, a licensee with five magazines must have five Daily Summaries).

Failure to maintain accurate user permit records represented an additional 11 percent of all violations cited between FY 2006 and FY 2011.<sup>26</sup> Licensees must take regular, documented inventories of their explosives and record specific information about the explosives acquired in each individual purchase to remain in compliance with this regulation. Failure to maintain accurate user permit records is the second most common violation both among user permit holders and the entire licensee population because user permit holders represent 65 percent of the licensee population. Importers, manufacturers, and dealers have similar, but not identical, requirements to take inventories and maintain records about the explosives they purchase and sell.<sup>27</sup> Failures to maintain importer, manufacturer, or dealer records are the second most common violations among importers, manufacturers, and dealers. However, these violations represent only a small share of overall violations because the populations of importers, manufacturers, and dealers are much smaller.

Unlike many storage violations, which can be corrected with a single action, complying with the Daily Summary and records regulations requires licensees to take frequent, intentional action to remain in compliance. The detailed documentation of each individual transaction must be completed no later than the next business day. Similarly, the most commonly cited storage violation is for failure to maintain magazine housekeeping standards that require licensees to take frequent, intentional action to keep magazines neat and clean, and to keep the grounds near the magazines mowed or trimmed.

ATF faces two challenges in responding to these common violations. First, past compliance is no guarantee of future compliance because the nature of these violations requires companies to take

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<sup>26</sup> 27 C.F.R. § 555.125. This regulation contains multiple subsections. We combined the requirements of all subsections of each regulation when determining which regulations were violated most frequently.

<sup>27</sup> Importer, manufacturer, and dealer records requirements are codified at 27 C.F.R. §§ 555.122-124.

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continuous steps to remain in compliance each day. Licensees that had no Daily Summary violations in the past could make mistakes in those records in the future. Second, several ATF employees told us that accurately measuring bulk explosives (also referred to as emulsions or slurries) is difficult because the product has a tendency to settle and its volume changes in response to changes in humidity levels or temperature. These problems with measurement could affect the accuracy of the records that the licensees are required to maintain.

**ATF has a framework to guide its field divisions in responding to non-compliant explosives licensees.**

At the end of every inspection, Investigators and their supervisors determine whether to recommend that ATF take administrative action in response to the inspection findings. ATF has issued two memoranda to its field divisions, in 2006 and 2007, that provide criteria and guidance for making consistent recommendation decisions. The guidance focuses on the three most common administrative actions ATF can take: issuing a warning letter, holding a warning conference, and pursuing revocation of a license. ATF generally escalates through these actions, from a warning letter to holding warning conferences with companies that continue to have violations after receiving warning letters, to seeking revocation of licenses when violations continue following warning conferences. The guidance requires field division personnel to consider four major factors, described below, before recommending revocation of a license. Field division personnel told us that they consider these factors to be important in determining recommendations for every inspection.

The four factors described in the guidance are willfulness, compliance history, impact on public safety, and severity of violations. These factors overlap to some degree. For example, willfulness can be established by a compliance history that involves multiple inspections involving the same violations despite ATF's instructions to the licensee to change its actions. Similarly, severe violations may also present a significant risk to public safety. During our review, the Directors of Industry Operations in all 25 ATF field divisions described these four factors, especially compliance history and impact on public safety, as being important in their divisions' selection of recommendations.

We found that the relative percentages of each type of recommendation changed little from year to year between FY 2006 and FY 2011 despite changes in the numbers of inspections completed. During each of these years, ATF sent a warning letter in approximately 25 percent of the inspections with violations, held a warning conference in approximately 10 percent of the inspections with violations, and

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sought revocation in approximately 3 percent of the inspections with violations. Fifty percent of the inspections with violations involved violations that ATF considered sufficiently minor to only provide the licensee with a Report of Violations rather than to take any administrative action.<sup>28</sup> In the remaining 12 percent of inspections with violations, the company either went out of business or ATF addressed the violations by other means.

We found that 23 of the 25 field divisions have put in place procedures for reviewing explosives inspections to ensure that their recommendations are consistent within all field division sub-offices.<sup>29</sup> The divisions employ several different methods, including spot-checks of randomly selected inspections, regular discussions among field division managers, and regular discussions among Investigators during monthly training. Of these 23 divisions, 17 field divisions review random samples of inspections, but only 5 of the 17 engage in what we considered to be a best practice – they periodically review a random sample of closed explosives inspections, both with and without violations, to ensure that all violations were properly cited and reasonable recommendations were selected. By including inspections without violations in their samples, these five divisions are also able to assess whether Investigators are consistently citing all violations they observe. Six of the 23 divisions review inspections on a case-by-case basis, but do not conduct any random sampling. The remaining two field divisions do not have any procedures in place to assess the consistency of their explosives inspection recommendations.

**ATF’s case-by-case approach to its explosives inspection program does not make comprehensive use of inspection data to identify trends in the explosives industry or target its resources to address these trends.**

ATF currently identifies issues that it believes warrant further study using information learned during inspections, discussions with ATF Investigators and other ATF personnel, and discussions with

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<sup>28</sup> A “Report of Violations” is ATF’s form for documenting inspection violations and is used in every inspection where violations are found. For example, in one inspection report we reviewed, a Report of Violations was issued where the violation found was that the protective steel hood over the magazine lock was 3/16-inch thick instead of 1/4-inch thick. The steel hood prevents someone from breaking into a magazine by sawing off the lock.

<sup>29</sup> For this review, we did not independently assess the controls the field divisions use to ensure consistency.

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industry trade associations and individual licensees that seek collaboration or attend ATF outreach events. However, ATF does not analyze N-Spect data in a proactive manner to put these issues into the broader context of the explosives industry as a whole, and it does not use N-Spect data to identify additional industry trends that might also warrant further study.

ATF's approach to using the information in FLS and N-Spect has been to query the systems about specific licenses on a case-by-case basis. ATF does not enter all quantitative and categorical information collected during inspections into N-Spect and thus cannot query N-Spect to answer basic questions that could inform its approach to inspections.<sup>30</sup> Further, the databases were not designed to collect nationwide data about the explosives industry but to record and store information about each inspection, making it difficult for ATF to conduct analysis and identify patterns and trends within the industry.

These data issues prevent ATF from having ready access to nationwide data on some basic aspects of its explosives regulatory work.<sup>31</sup> For example, ATF employees told us that ATF does not know the exact number of commercial explosives magazines in the United States or in a region.<sup>32</sup> Investigators do add storage information, including types and location of magazines, to N-Spect after each inspection. But this can result in a single magazine being entered into N-Spect multiple times (once per inspection over the course of multiple inspections), and ATF headquarters and the field divisions have no effective way to identify and exclude duplicate entries. As a result, in the event of a natural disaster such as a flood, ATF field offices cannot rely on N-Spect to determine how many magazines – and therefore how much explosive material – might have been affected by the disaster.

Further, ATF cannot use the inspection data it currently collects to analyze cited violations and examine whether any violations are specific to, or more common in, particular subsets of the explosives industry. ATF collects information about licensee size, type of work, and amount of

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<sup>30</sup> For example, ATF does not record information in N-Spect about how many magazines exist at a business site or characteristics of a licensee such as its size, its industry, or the types of explosives it uses.

<sup>31</sup> We find these data issues significant given the overall size of the licensee population (10,600) and the number of those licensees due for inspections each year (between 2,200 and 4,200).

<sup>32</sup> In an effort to tabulate the number of magazines, ATF plans to initiate a pilot program in FY 2013 to test options for tagging magazines with identification numbers.

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inventory on hand in narrative reports Inspectors write that are separate from the N-Spect database. Currently, ATF can access this information only by opening these narrative inspection reports one at a time. If ATF compiled this data systematically in N-Spect, then ATF headquarters could examine the impact of these categorical and quantitative characteristics across multiple field divisions. If this analysis identified any relationships between licensees and violations, ATF could monitor changes in the population of licensees and become more proactive about addressing changes in the type or frequency of violations resulting from the changing population.

For example, if ATF documented information on the types of explosives used in N-Spect, it could then use inspection results to identify trends in the use of various explosive products and how the trends in products relate to trends in violations. The former Deputy Assistant Director for Industry Operations told us that such analyses would be beneficial to ATF because they might help it determine if there has been a shift away from easily countable products, such as dynamite, toward products that are more difficult to count, such as bulk explosives. If an analysis of inspection results showed a relationship between the use of bulk explosives and recordkeeping violations, then monitoring changes in the use of bulk explosives could help ATF anticipate changes in recordkeeping violations.

Analyzing comprehensive inspection results could also help ATF more effectively share compliance best practices with licensees that do not attend outreach events. According to ATF employees, not all licensees participate in those events, but ATF Investigators talk with every licensee during the course of inspections. If ATF headquarters analyzed inspection results to determine how licensee size, licensee age, industry, type of explosive materials, or geographic region influenced violations, then Investigators could proactively share useful information collected from past inspections during their inspections. This way, ATF could share best practices it identifies that are most applicable to each licensee at least once every 3 years.

In addition to quantitative analysis, we believe ATF should also incorporate its inspection data into qualitative analyses. For example, ATF needs a better understanding of the relationship between types of explosives used and inspection results, an evaluation of how the explosives industry is using technologies that are more advanced than what is described in the regulations, and an assessment of the

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effectiveness of recall inspections.<sup>33</sup> Because this type of information is not categorical or quantitative, adding data fields to N-Spect would not capture the details in a way that would be useful for ATF. Instead, other analytical methods, such as file reviews or case studies, would likely be more beneficial.

However, it would be difficult for ATF headquarters to do so given its current recordkeeping systems because ATF cannot easily identify groups of inspections that should be reviewed collectively to identify patterns of industry behavior. This type of analysis would be easier to conduct if ATF first improved its collection of categorical and quantitative data as described above.

If ATF headquarters were to make comprehensive use of its inspection results, it could identify trends that cut across multiple states and field divisions and fully assess the broader impact of these trends. For example, extensive drilling for natural gas is being done in upper Pennsylvania and nearby states because of the Marcellus shale.<sup>34</sup> A Director of Industry Operations told us that his field division has seen an increase in its explosives inspection workload due to the drilling. An Investigator who inspects gas drilling operations told us that one unique task for these inspections is checking the drill paths to make sure they are a safe distance from magazines. If ATF headquarters could analyze trends across the five field divisions in this region, it could assess how the drilling affects both inspection workload and whether there are any types of violations or safety issues (such as the distance between drill paths and magazines) that are unique to drilling operations. ATF then would be able to disseminate its conclusions to the field divisions in this region to help them manage their resources to better identify and address emerging issues at a licensee before those issues turn into violations.

ATF also could benefit from comprehensive analyses of inspection results that reveal how new technologies, variances from its regulations, and its industry outreach activities ultimately affect industry compliance. Currently, ATF conducts some analysis of variances requested by licensees who want exceptions to the requirements in the explosives

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<sup>33</sup> For example, some licensees monitor their magazines with security cameras, something not covered by the regulations. Others are experimenting with locks that are made out of materials harder than the case-hardened steel required by the regulations.

<sup>34</sup> The Marcellus shale is a source for many oil and gas reservoirs in the Appalachian basin. Marcellus production is focused on five states in five different ATF field divisions: Pennsylvania, Ohio, West Virginia, New York, and Maryland.

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regulations. ATF does so after a specific issue is brought to its attention and may issue rulings to clarify the meaning of existing regulations. However, this reactive approach does not take full advantage of the information that ATF gathers during explosives inspections. For example, several ATF employees told us that the explosives regulations, originally issued in the 1970s when the use of computers was uncommon, do not account for advances in technology and products. ATF therefore issued a ruling in 2007 to allow explosives licensees to maintain their explosives records electronically. Analyzing violations found during inspections could help ATF identify other regulations that could be updated to better align with what the explosives industry is already doing.

### Conclusion and Recommendation

Overall, we concluded that ATF headquarters does not take full advantage of the information its Investigators collect during their inspection work. As a result, ATF is not able to fully identify and assess national or regional trends throughout the explosives industry. We believe that if ATF headquarters conducted more in-depth analyses of the inspection results it already collects, such as by examining the influence of licensee size, industry, and type and amount of explosive materials used in the violations it finds, it could use that information to address changing trends in the explosives industry proactively rather than reactively. We recommend that ATF:

3. Identify inspection information that would be useful for analysis of its explosives licensee inspection program, and of trends in the explosives industry, and develop methods for regularly collecting and analyzing this information.

### ATF does not currently have enough information to determine which licensees would be most likely to benefit from recall inspections.

ATF headquarters does not currently analyze whether licensees that received recall inspections show collective improvement. Such analyses could help ATF identify whether some types of licensees might benefit from more frequent inspections than the 3 years required by law and whether other types of licensees are likely to improve their compliance without receiving recall inspections. If ATF finds that some types of licensees improve their compliance without recall inspections, it could redirect the resources spent on those inspections to other priorities.

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Field divisions determine if an individual licensee has shown improvement following a recall inspection by reviewing compliance history and previous violations. They use these factors because the purpose of the recall inspection is to see if licensees with previously identified violations have corrected the problems. The field divisions acquire this information by reviewing and analyzing the individual narrative inspection reports created outside of N-Spect.

Until 2010, ATF measured each quarter whether licensees had collectively improved their compliance after recall inspections. ATF stopped using this performance measure in 2010 because it concluded that the measurement did not give a good picture of whether the licensees had improved. We decided to analyze the effectiveness of recall inspections using a somewhat different method. ATF had compared only the number of violations from the licensees' first 3-year inspections (the baseline inspections) with the number of violations from the recall inspections. Fewer violations were taken to mean the recall inspections had improved the licensees' compliance. However, ATF concluded that its method did not measure the relative severity of the violations. In our analysis, we considered severity and regarded inspections that resulted in less-serious recommendations to be an indication of improved compliance.<sup>35</sup> Like ATF, we also considered a reduction in the number of violations to be an indication of improved compliance. Unlike ATF, we looked at the changes between two compliance inspections and whether a recall inspection was conducted in between.

In a sample of 117 licensees that ATF had identified for recall inspections and that had a second SEA compliance inspection 3 years later, 81 percent (95 of 117) became more compliant than they had been originally. However, not all of these 117 companies had received recall inspections. While explosives qualification and compliance inspections are mandatory, explosives recall inspections are discretionary and thus compete with firearms inspections for priority.<sup>36</sup> Of the 117 licensees in our sample, 25 did not have recall inspections between the baseline compliance inspection and their second SEA compliance inspection, yet 84 percent (21 of 25) improved over their baseline inspections. The

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<sup>35</sup> Recommendations, in order of increasing severity, are Report of Violations, Warning Letter, Warning Conference, and Revocation. For more information, see our earlier discussion of ATF's guidance for field divisions to respond to non-compliant licensees.

<sup>36</sup> ATF field division employees told us that they try to conduct explosives recall inspections as necessary without considering whether they are a mandatory or discretionary priority.

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remaining 92 licensees did have recall inspections between the baseline inspection and their second SEA compliance inspection, and 80 percent (74 of 92) of them improved over their baseline inspections. Thus, while recall inspections may be helpful in individual cases, our limited sampling did not indicate that recall inspections greatly improved future compliance overall.

We do not intend to suggest that recall inspections have no value and should be eliminated. To the contrary, we believe that our review demonstrates the need for ATF to be more targeted in its recall inspections. However, given its limited data analysis, ATF currently is unable to do so. If ATF were to analyze national trends in recall data, it might be able to identify characteristics that make some licensees more likely than others to improve if they receive a recall inspection. For example, ATF might find that newer licensees might benefit more from a recall inspection than licensees that are more established in the business. Such a finding would allow ATF to manage its resources more efficiently by directing Investigators to inspect the licensees who are least likely to improve without the additional inspections. As a result, field divisions might be able to reallocate some personnel and other resources from explosives recall inspections to other field division priorities.

ATF's method of monitoring field division progress on inspections impedes its ability to allocate resources more efficiently for national priorities.

ATF also does not have a clear picture of the field divisions' progress in completing mandatory explosives inspections, which makes it difficult for ATF headquarters to determine how efficiently ATF is using its Industry Operations resources nationwide. Under ATF's annual Industry Operations Operating Plans, field divisions have the flexibility to set division-specific discretionary inspection goals after they have met the nationwide mandatory goals. We found that field divisions generally have the ability to monitor their own progress toward meeting their division-specific and nationwide goals. However, ATF headquarters cannot fully monitor how the explosives inspection workload changes over the course of the year and cannot easily match inspections completed to the population of inspections required. Therefore, we concluded that ATF headquarters may miss opportunities to reallocate resources between field divisions to best fulfill nationwide priorities.

ATF headquarters cannot always see changes in a field division's explosives inspection workload over the course of the year. Field division employees told us that they plan and execute their annual explosives inspection workload based on a list of required SEA inspections provided

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to them by ATF headquarters.<sup>37</sup> Every year some licensees cease to work with explosives after this list is generated and do not need to be inspected. Field division employees may learn of these situations directly from the licensees while conducting routine pre-inspection research or upon arrival at a licensee's former address to initiate an inspection.

If field division employees learn that a licensee has gone out of business before initiating that licensee's inspection, they do not have to create any record in N-Spect because there is no inspection to document. Although this practice creates no harm for the field divisions because N-Spect remains an accurate record of how field division staff actually spend their time, it complicates ATF headquarters' ability to monitor the nationwide use of Industry Operations resources. If a field division has concluded that an inspection is not necessary because a licensee has ceased to work with explosives, it appears to ATF headquarters that the licensee was not inspected. The reason for the failure to complete the inspection does not become clear to ATF headquarters until months later when that licensee declines to renew the license. As a result, ATF headquarters may assume that the field division still needs to use its resources to complete its annual explosives inspection workload when, in fact, the field division may have already completed all of its mandatory assignments. If other field divisions were in need of supplemental resources to complete their annual explosives inspection workloads, ATF headquarters could not easily see how many field divisions had moved on to discretionary inspections and might have resources available to assist with mandatory inspections in other parts of the country.

ATF's current tracking of inspection data is inefficient and time consuming.

ATF headquarters uses the N-Spect database to track overall numbers of completed inspections, but it is unable to determine with certainty whether each individual licensee has received an SEA compliance inspection without manually reconciling the inspection and licensee data. ATF headquarters employees told us that during each quarter of the fiscal year, they run a report to determine whether each field division is on pace to complete its required number of inspections that year. This report shows ATF headquarters whether the correct number of inspections was completed, but cannot directly show whether the correct licensees were inspected.

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<sup>37</sup> As noted in the Background section, this list is included in the annual Industry Operations Operating Plan that is shared with all field divisions at the start of each fiscal year.

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To determine whether each licensee has received an SEA compliance inspection, ATF headquarters spends time manually reconciling inspection and licensee data. SEA compliance inspections are not always easily identifiable in ATF's data systems, making it difficult and time consuming for ATF to confirm that each licensee received an inspection when needed.<sup>38</sup> Similar to the situation we described in the previous section, this difficulty can make it appear to ATF headquarters as though mandatory explosives inspection work is incomplete when, in fact, it is not. Again, ATF headquarters may miss opportunities to reallocate resources between field divisions to best fulfill nationwide priorities.

One reason SEA compliance inspections are not easily identifiable is that license numbers change. For example, federal regulations require ATF to issue new license numbers to licensees that submit license renewal applications after their existing licenses expire, licensees that seek a different type of license (such as converting from a dealer to an importer), licensees that convert to a new type of entity (such as switching from a sole proprietorship to a corporation), or licensees that relocate their businesses.<sup>39</sup>

We observed that some of the difficulty ATF headquarters faces in determining whether each licensee has received an inspection results from field divisions recording inspections under old license numbers, while ATF headquarters begins its searches using new license numbers. One licensee may have several different license numbers over the lifetime of its explosives operations. In such cases, ATF headquarters must manually search its databases using other identifying information such as the business name or Responsible Person to identify the completed inspection that is associated with the license that appears to be missing an inspection. This inefficient method consumes time that ATF could allocate for other priorities. ATF headquarters could make the inspection reconciliation less difficult by tracking the entity throughout its life regardless of changing license numbers.

In the absence of a centralized ability to draw connections between inspections required and inspections completed, ATF's field division personnel have created their own methods of monitoring their SEA compliance. Nineteen of the 25 field divisions maintain their own SEA inspection tracking documents, separate from ATF's main databases.

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<sup>38</sup> One of ATF's performance measures is to ensure that 100 percent of explosive licensees received a qualification or SEA compliance inspection within the last 3 years.

<sup>39</sup> 27 C.F.R. §§ 555.46(a), 555.54, and 555.57.

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Field division personnel maintain these documents using ATF data and update them as their inspections are completed, essentially documenting all of their inspections twice. Maintaining these tracking documents puts a burden on field division supervisors' time that could be used for operational activities. Although ATF headquarters can request these local tracking documents from the field, it cannot use this information to monitor nationwide progress because the field divisions do not track their inspections identically and their results may not be directly comparable.

Currently, FLS and N-Spect are stand-alone systems; updating information in one system does not automatically update the other. We concluded that, at the time these systems were first implemented (2000 and 1999, respectively), ATF had no particular need to be able to see connections between licenses issued and inspections conducted. ATF did not begin to need that information until the SEA went into effect in 2003. ATF employees agreed that automatic sharing of the date of a licensee's last inspection, licensee identifying information and locations, and the number of magazines each licensee possesses would be helpful information. Several Directors of Industry Operations told us that it would be helpful to have N-Spect and FLS communicate with each other, although they acknowledged that connecting these systems would be a major investment of ATF's time and money.

### Conclusion and Recommendation

We believe that ATF would be able to improve its allocation of resources if it used more effective methods of monitoring its progress in completing inspections. Currently, both headquarters and the field divisions are expending time and resources to reconcile licensee and inspection data that could be better used for other priorities recommended in the annual operating plans. While connecting FLS and N-Spect would make inspection tracking and oversight more efficient, it would also require ATF to make a major investment of both time and money. We believe ATF could make improvements to its efficiency if it stopped using a potentially changing license number to connect information on licenses and inspections. This could help minimize the disconnect ATF currently finds when attempting to reconcile its records. We recommend that ATF:

4. Develop a method for tracking entities regardless of changing license numbers, such as assigning an identifying number to each licensee that remains consistent for the duration of the licensee's explosives operations.

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**ATF is unable to ensure that no one purchases explosives with expired licenses or without necessary inspections.**

We identified two issues that limit ATF's ability to effectively enforce explosives regulations across the entire licensee population. First, we found that a federal regulation designed to ensure continuity of explosives operations for licensees renewing their licenses creates a loophole that allows for the possibility of licensees purchasing explosives with expired licenses. Second, we found that ATF's practice of conducting only telephone inspections of one subset of the licensee population allows for the possibility that licensees could avoid in-person inspections by making statements to ATF that ATF does not always independently verify.

ATF's issuance of Letters of Authorization only upon request prevents it from ensuring that only buyers that have applied for license renewal may purchase explosives after their licenses expire.

A licensee may submit a timely renewal application to ATF up to the day that its license expires. If a licensee submits a renewal application on or just a few days before the license's expiration date, ATF may not be able to issue the new license before the old one expires. If ATF determines that it will be unable to complete the renewal process and grant a renewed license before the previous one expires, a federal regulation and an ATF practice both ensure continuity of the licensee's business. First, a seller may sell or distribute explosives to a buyer for not more than 45 days following the expiration of the buyer's license or permit, unless the seller knows or has reason to believe that the buyer's authority to continue explosives operations has been terminated.<sup>40</sup> Second, a buyer may request that ATF issue a Letter of Authorization (letter) as proof that the buyer is allowed to continue purchasing explosives. However, ATF does not require buyers with expired licenses to obtain these letters.

While the regulation requires sellers to verify a buyer's authorization to purchase explosives, sellers do not have a reliable method to confirm that a buyer whose license has expired has applied for a renewal of the license and is within the 45-day grace period.<sup>41</sup> The

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<sup>40</sup> 27 C.F.R. § 555.103(b)(1)(i).

<sup>41</sup> The regulation requiring sellers to verify a buyer's authorization to purchase explosives is 27 C.F.R. § 555.103(b)(1)(ii).

*(Cont'd.)*

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regulation allows the seller to assume that a transaction with the expired license is valid unless the seller knows the buyer has not renewed the license. A letter from ATF would serve to confirm the buyer's authority to purchase explosives, but buyers are not required to obtain such a letter.<sup>42</sup> As a result, a licensee that has not filed for license renewal may be allowed to purchase explosives in the 45 days after a license expires.<sup>43</sup>

ATF could rectify this problem easily by issuing an authorization letter in every case where a renewal application is pending on the day a license expires.

### Conclusion and Recommendation

ATF's practice of issuing letters attesting to the continuing validity of a recently expired license only when licensees request them is a weakness that prevents sellers from easily confirming a buyer's eligibility to purchase explosives. Therefore, we recommend ATF:

5. Create a reliable, consistent, and efficient mechanism for explosives sellers to verify a buyer's authorization to purchase explosives, such as by providing a Letter of Authorization to every buyer with an expired license that files a timely renewal application.

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ATF officials told us that they are interested in developing an online system for sellers to verify buyers' licenses, but that they have not yet done so due to legal impediments relating to privacy considerations.

<sup>42</sup> In the absence of a letter, sellers can call the Federal Explosives Licensing Center, which takes calls from 7 a.m. to 3:30 p.m. Eastern Standard Time, or their local ATF field offices, to verify a buyer's authorization.

<sup>43</sup> We did not review whether and to what extent buyers with expired licenses were able to buy explosives because that was outside the scope of our review.

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ATF's practice of inspecting end-users of explosive pest control devices only by telephone creates a risk that they could access the full range of regulated explosives without the necessary in-person inspections.

ATF does not hold end-users who use only explosive pest control devices (EPCD) to the inspection standards it applies all other licensees, even though EPCD end-users have the same access all licensees do to a wide range of explosive materials. ATF adopted the practice of inspecting EPCD end users by telephone to conserve resources. It relies on the end-users to state whether they are using only EPCDs and does not always verify those statements. As a

result, end-users could tell ATF they use only EPCDs and be inspected by telephone even if they are in fact purchasing other explosives for which ATF conducts an in-person inspection.

#### **Explosive Pest Control Devices**

EPCDs are:

- Used to frighten birds and other pests away from airports, landfills, and agricultural areas without harming the animals.
- Designed to be thrown by hand or fired from a firearm or another launching device.
- Considered to be explosives because they contain flash powder, black powder, or other pyrotechnic materials.

Source: ATF's Explosives Industry Program Branch, *Federal Register*, Vol. 68, No. 19 (Jan. 29, 2003), Notice No. 969.

Commercially manufactured EPCDs are not considered particularly powerful explosives (see text box), and from December 2001 through November 2010, ATF did not inspect end-users of EPCDs at all. During that period, it considered whether EPCD end-users could be exempted from federal explosives regulations, but the Department concluded that only Congress had the authority to create new exemptions to explosives laws and regulations and halted this effort.<sup>44</sup>

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<sup>44</sup> In response to congressional concerns, ATF conducted research and considered several options between 2001 and 2009 for regulating end-users of EPCDs. ATF tested methods for storing EPCDs and concluded that they could be safely stored in a different way than had been previously allowed under the regulations. ATF also analyzed incidents reported to the U.S. Bomb Data Center over a 10-year period and concluded that the devices were rarely used in crimes.

In 2009, a bill was introduced in the Senate that would have both created a specific statutory exemption for EPCDs and granted the Attorney General the authority to create additional exemptions in the future for explosives that did not pose a threat to public safety and were unlikely to be used as a weapon. This bill did not pass, and no similar bill has been introduced since.

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ATF continues to inspect EPCD manufacturers, importers, and dealers in person.

In November 2010, ATF decided that as long as applicants for end-user permits indicated they planned to use only EPCDs, ATF Investigators would inspect them by telephone.<sup>45</sup> In FY 2011, the first year in which these inspections could be separately identified in N-Spect, ATF conducted 85 inspections by telephone. Seventy-five were qualification inspections for new permits, and 10 were compliance inspections for existing permit holders.<sup>46</sup>

We found ATF's decision to exempt one group from in-person inspections troubling because an explosives license or permit authorizes its holder to purchase any type of explosives, not just those explosives described in the application. Thus, while an applicant might tell ATF that it intends to obtain only EPCDs, there is nothing to prevent the applicant from purchasing other explosives once the license is obtained. ATF's current policy presents a risk that permit holders could obtain non-EPCD explosives without an in-person visit by ATF, as ATF's telephonic inspection policy provides for no independent verification of permit holders' statements regarding the type of explosives they use and store.

We believe ATF should conduct in-person inspections of all end-users. In-person inspections allow ATF to independently verify what licensees and permit holders say, both by seeing that they are using and storing the type of explosives that they told ATF they would be using and also by verifying that the person running the company is the one who applied for the license or permit. If licensees or permit holders were found to be using other types of explosives besides EPCDs, in-person inspections would allow ATF to ensure that those materials were being handled and stored properly.<sup>47</sup>

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<sup>45</sup> ATF conducts in-person inspections for all other applicants.

<sup>46</sup> In this report, we have used the term "license" to refer to both licenses and permits. However, in this instance we are referring specifically to permits.

<sup>47</sup> We note that ATF officials stated that they have not encountered instances of anyone exploiting the loophole described in this section, and it was beyond the scope of our review to look for such instances. We also note, however, that unless ATF institutes a mechanism for obtaining independent verification of statements made by permit holders that purport to use only EPCDs, ATF is unlikely to know whether they are actually obtaining other explosives as well.

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Alternatively, telephonic inspections of EPCD end-users would be appropriate if ATF issued permits that allowed holders to purchase only EPCDs. However, ATF's position is that issuing a license or permit that is restricted to only some explosives would be equivalent to creating a new license or permit type beyond what is currently authorized in the law and that this can be done only by Congress.

### Conclusion and Recommendation

ATF does not hold EPCD users to the same inspection standards applied to all other licensees and permit holders, even though these users have the same access to explosives. We are concerned that ATF has only limited contact with these permit holders and does not always verify that what they are telling Investigators is true. If ATF intends to continue inspecting EPCD users by telephone, it needs a better way to ensure those users can access only EPCDs and no other types of explosives for which ATF would normally conduct in-person SEA compliance inspections. We recommend that ATF:

6. Conduct in-person inspections of all EPCD users or obtain the authority to issue licenses and permits valid only for EPCDs.

### **ATF does not have an effective way to enforce the regulatory requirements for its collection of the records of explosives licensees that go out of business.**

Federal explosives regulations require companies that have gone out of business to turn in their last 5 years of explosives purchase, sale, and inventory records to ATF, or to a successor licensee, within 30 days of discontinuance.<sup>48</sup> ATF collects these records so that they are available if ATF needs them as part of an explosives trace. We found that many explosives trace requests involve explosives that are more than 5 years old at the time ATF receives the trace request. An employee of the U.S. Bomb Data Center (USBDC), which conducts explosives traces, told us that because of this the Center relies on its own database of records voluntarily provided by explosives manufacturers.

ATF faces two obstacles when it comes to enforcing this provision. First, there is little incentive for licensees to submit records when going out of business because there are no penalties for companies that violate this provision. Second, ATF does not know which licensees that go out of

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<sup>48</sup> 27 C.F.R. § 555.121(a)(2) and 27 C.F.R. § 555.128. Federal regulations do not require licensees to keep records of how they use the explosives they purchase.

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business have records to submit because it does not know which licensees have ever bought or sold explosives.

Forty-two percent of the licensees that went out of business between FY 2006 and FY 2011 turned in their records to a successor licensee or to ATF as required by the regulations.<sup>49</sup> ATF does not know what happened to the records of the remaining 58 percent (4,643 of 8,065) of licensees that discontinued operations during these 6 years.<sup>50</sup>

There is no explicit statutory requirement for explosives licensees to turn in these records when they go out of business, only a regulatory requirement. Moreover, the only penalties ATF can impose for failure to comply with any explosives regulation are administrative actions such as warning letters, warning conferences, or license revocations, but these options would not affect a licensee that has already gone out of business and given up its license. By contrast, firearms licensees have a statutory obligation to turn in 20 years of firearms records to ATF when they go out of business, and may face penalties that range from a fine to 5 years in prison, or both, if they fail to do so.<sup>51</sup>

In addition, we found that the data systems ATF uses are inefficient in tracking the records of companies that go out of business. FLS and N-Spect document which licensees go out of business, and FLS has fields to document when a licensee turns in its records. However, there are no data fields in either system that allow ATF to determine whether licensees possessed explosives while they were licensed and therefore generated records in the first place.<sup>52</sup> Thus, if a licensee goes

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<sup>49</sup> We concluded that ATF knew what happened to these records because FLS contained a disposition status code that describes what happened to the records or, in the alternative, FLS recorded either an identification number assigned by ATF's Out-of-Business Records Center to materials it has received or the license number of a successor licensee.

<sup>50</sup> We concluded that ATF did not know what happened to these records because FLS included a disposition status code that did not describe what happened to the records and also had neither an Out-of-Business Records Center identification number nor a successor license number.

<sup>51</sup> The statutory requirement to turn in records of a discontinued firearms business is found at 18 U.S.C. § 923(g)(4). The statutory penalty for failure to turn in records for a discontinued firearms business is found at 18 U.S.C. § 924(a)(1)(D).

<sup>52</sup> ATF field division employees told us that licensees that do not possess explosives are likely to operate in states that require all companies bidding on public works projects to have a federal explosives license or permit, regardless of whether explosives are necessary for the project being bid.

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out of business without submitting its records, ATF does not typically know whether the licensee had records to submit.

### Conclusion and Recommendation

ATF currently does not collect enough records to benefit its explosives tracing needs and should identify how many years' worth of records would be beneficial. Additionally, although licensees are required to turn in these records when they go out of business, ATF has no effective options for penalizing licensees that fail to provide these records. ATF collected records from fewer than half of the licensees that went out of business between FY 2006 and FY 2011.

We recommend that ATF:

7. Explore ways to obtain more out-of-business records within ATF's current legal authority.

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## CONCLUSION AND RECOMMENDATIONS

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ATF is doing well in some aspects of its explosives industry program but needs improvement in others. ATF conducted at least 94 percent of the compliance inspections required by the SEA during the 6 years the OIG reviewed. However, the limitations of ATF's data management make it difficult to determine whether the remaining 6 percent of inspections examined explosives storage, took place at all, or if they were completed in a timely manner. These problems impede ATF's ability to determine whether it inspected all licensees' explosives storage facilities as required by the SEA and whether those inspections were completed in the timeframe required by ATF policy.

ATF has established controls to ensure inspections are performed consistently and issued guidance to help field divisions address compliance problems in a consistent manner. Our analysis showed that ATF made its inspection recommendations consistently between FY 2006 and FY 2011. It also showed that ATF Investigators found fewer violations in FY 2011 than in FY 2006, and those violations were committed by a smaller segment of the licensee population. Despite these trends, ATF may face continuing challenges with industry compliance, as many commonly cited violations, such as recordkeeping violations, require licensees to take daily action to remain in compliance.

ATF headquarters does not take full advantage of the information its Investigators collect over the course of their inspection work. We believe that if ATF conducted more in-depth analyses of the inspection results it already collects, it could identify and address changing trends in the explosives industry proactively rather than reactively. Moreover, these types of analyses could help ATF headquarters assess the impact of national or regional trends that cross existing field division boundaries, allowing it to assess whether resources should be reallocated between field divisions and devise more effective enforcement programs. ATF also needs to monitor its progress in completing inspections more effectively, both so it can reduce the amount of time and resources currently devoted to this task and so that it can better identify situations where resource reallocation could improve ATF's overall efficiency. ATF employees have suggested, and we agree, that connecting FLS and N-Spect would help in this regard. However, ATF could also make changes within the current versions of FLS and N-Spect that would address these concerns.

In two areas, ATF has made decisions that have limited its ability to effectively enforce explosives regulations. First, issuing Letters of

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Authorization only when licensees request them is a weakness that could allow former licensees to purchase explosives even though their licenses have expired and they have not sought to renew them. Second, ATF does not inspect EPCD end-users in person, even though they have access to the full range of explosives. ATF needs to inspect EPCD users in person as long as they are allowed to purchase all types of explosives.

Finally, fewer than half of the licensees that went out of business between FY 2006 and FY 2011 complied with a regulatory requirement to provide their explosives records to either ATF or a successor licensee.

To improve ATF's ability to effectively and efficiently oversee its inspection program, and identify and respond to trends in the explosives industry, we recommend that ATF:

1. Ensure that the SEA mandate is fulfilled by tracking whether compliance inspections include a full examination of storage facilities;
2. Ensure that Investigators document the end date of the on-site portion of each inspection in N-Spect;
3. Identify inspection data that would be useful for analysis of its explosives licensee inspection program, and of trends in the explosives industry, and develop methods for regularly collecting and analyzing this information;
4. Develop a method for tracking entities regardless of changing license numbers, such as assigning an identifying number to each licensee that remains consistent for the duration of the licensee's explosives operations;
5. Create a reliable, consistent, and efficient mechanism for explosives sellers to verify a buyer's authorization to purchase explosives, such as by providing a Letter of Authorization to every buyer with an expired license that files a timely renewal application;
6. Conduct in-person inspections of all EPCD users or obtain the authority to issue licenses and permits valid only for EPCDs; and
7. Explore ways to obtain more out-of-business records within ATF's current legal authority.

## APPENDIX I: ATF EXPLOSIVES ASSIGNMENTS

ATF categorizes Investigators' assignments into four main categories of activities within N-Spect that are further broken down into subcategories of inspections or other assignments as follows. These categories include assignments and inspections for all of ATF's areas of responsibility: firearms, explosives, arson, tobacco, and alcohol.

Category of Assignment	Administrative	Compliance	General	Qualification
<b>Subcategory of Assignment Types</b>	<p><b><u>Accounting</u></b> Agent Cashier Fund Audit</p> <p><b><u>Training</u></b> Assembled Training – Instructor  Assembled Training – Student</p> <p><b><u>Detail Assignments</u></b> Detail to Field Division  Detail to Headquarters</p> <p><b><u>Other</u></b> Special Request from Licensing Center</p>	<p><b><u>Investigations</u></b> Accidental Explosion Investigation  Assist ATF Investigation  Assist Law Enforcement  Investigation Theft or Loss</p> <p><b><u>Fireworks Inspections</u></b> Fireworks Limited</p> <p>Fireworks Temporary Storage Verification</p> <p><b><u>Non-SEA Inspections</u></b> Non-SEA Full  Non-SEA Full Explosives Threat Assessment and Prevention Strategy (ETAPS)  Non-SEA Limited  Non-SEA Limited ETAPS</p>	<p><b><u>Magazine Inspection</u></b> ATF Magazine</p> <p>Other Federal/ State/ Local Magazine</p> <p><b><u>Disaster Recovery</u></b> Field Contact</p> <p>Telephone Contact</p> <p><b><u>Outreach</u></b> ETAPS  ETAPS – Ammonium Nitrate  ETAPS – Chemical  Government  Industry  Public</p> <p><b><u>Other</u></b> Referrals NOT Associated with an Inspection</p>	<p>Qualification EPCD</p> <p>Qualification New</p> <p>Qualification New On-site</p> <p><b><u>Other</u></b> Application for new Employee or Responsible Person</p> <p>Verification EXPLOSIVES ONLY</p>

Category of Assignment	Administrative	Compliance	General	Qualification
		<p>Disposition Emphasis Non-Violent Crime Impact Team (VCIT)</p> <p>Non-VCIT Limited Scope</p> <p><b><u>SEA</u></b> SEA Full</p> <p><b><u>Recall</u></b> Recall Inspection Full Scope</p> <p>Recall Inspection Limited Scope</p> <p><b><u>Other</u></b> Southwest Border</p> <p>Special Request Other</p> <p>Explosive Pest Control Devices (EPCD)</p> <p>Field Division Initiative</p>	<p>Special Request from Explosives Industry Programs Branch</p> <p>Headquarters Initiative</p>	

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## APPENDIX II: ATF RESPONSE TO DRAFT REPORT

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U.S. Department of Justice

Bureau of Alcohol, Tobacco,  
Firearms and Explosives

MAR 28 2013

www.atf.gov

MEMORANDUM TO: Inspector General

FROM: Acting Director

SUBJECT: The Bureau of Alcohol, Tobacco, Firearms and Explosives  
Response to the Office of the Inspector General's Formal Draft  
Report on the Review of ATF's Explosives Inspection Program  
Assignment Number A-2011-003

The Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) has reviewed the Department of Justice, Office of the Inspector General's (OIG) draft report on the above-cited subject. We appreciate the opportunity to provide comments on the report and its recommendations. ATF provides the following formal response to the OIG's recommendations:

**Recommendation #1:** Ensure that the Safe Explosives Act mandate is fulfilled by tracking whether compliance inspections include a full examination of storage facilities.

**ATF's Response:** Concur. ATF will track in N-Spect whether compliance inspections include a full examination of storage facilities.

**Recommendation #2:** Require investigators to document the end date of the on-site portion of each inspection in N-Spect.

**ATF's Response:** Concur. ATF by policy requires its Industry Operations Investigators to document the end date of the on-site portion of each inspection in N-Spect. ATF also will examine the feasibility and cost of improving the N-Spect system to prompt system users when this information is not recorded.

Inspector General

**Recommendation #3:** Identify inspection information that would be useful for analysis of its explosives licensee inspection program, and of trends in the explosives industry, and develop methods for regularly collecting and analyzing this information.

**ATF's Response:** Non-concur. ATF's assessment is that the manner in which it currently collects and analyzes industry information is efficient, that the cost of developing new recordkeeping systems and of deploying human resources to undertake the type of comprehensive analysis of inspection data described in the recommendation would be substantial, and that any additional value created by such a undertaking would be marginal.

ATF's assessment is that its nationwide analytic and outreach programs effectively identify and address trends in the explosives industry. Trend identification is achieved through communication and collaboration within ATF, as well as through interaction with the industry members and associations. ATF makes presentations, participates in conferences and meetings, and issues Rulings, Open Letters, and other clarifications (such as newsletter articles) to identify, evaluate and address operational trends. ATF's relationships and partnerships with industry members and associations are particularly important, because the regulated industry is in a better position than ATF to forecast industry trends.

ATF believes that the cost of undertaking the type of information collection and analysis proposed by OIG would be high. As the draft report notes, the databases maintained by ATF in N-Spect "were not designed to collect nationwide data about the explosives industry but to record and store information about each inspection..." The expense of modifying current data collection applications, or acquiring new applications, would be substantial and, if acquired, would require that ATF divert funding from other important programs. In addition, ATF believes that implementation of the business model proposed by OIG would require a substantial commitment of personnel and training.

While the OIG recommendation suggests that analyzing inspection data represents a proactive approach to identifying industry trends, ATF respectfully disagrees. Inspection data are collected for a single point in time – the time at which the inspection occurs. Once data are collected from multiple inspections and analyzed, time has passed. Given that inspections for a particular license occur on a three year cycle, ATF believes that aggregated inspection data are necessarily stale, and therefore have low informational value relative to the information collected through current business practices.

Inspector General

**Recommendation #4:** Develop a method for tracking entities regardless of changing license numbers, such as assigning an identifying number to each licensee that remains consistent for the duration of the licensee's explosives operations.

**ATF's Response:** Concur in part. ATF agrees that it is desirable to track entities regardless of changing license numbers, and is assessing the feasibility and cost of doing so. ATF is not certain whether the recommendation to assign an identifying number to each licensee that remains consistent for the duration of the licensee's explosives operations is feasible, cost-effective or optimal.

ATF is examining using entities' voluntarily-provided employer identification number or social security number to link licenses associated with a single entity. It also is assessing whether existing data fields in the Federal Licensing System (FLS) can be used to record the entity with which a license is associated.

ATF also will assess the feasibility and cost of assigning unique identifier for each legal entity that applies for a license or permit.

**Recommendation #5:** Create a reliable, consistent, and efficient mechanism for explosives sellers to verify a buyer's authorization to purchase explosives, such as by providing a Letter of Authorization to every buyer with an expired license that files a timely renewal application.

**ATF's Response:** Concur in part. ATF agrees that it is desirable to have a reliable, consistent, and efficient mechanism for explosives sellers to verify a buyer's authorization to purchase explosives. ATF does not believe that it is advisable to provide a Letter of Authorization (LOA) to every buyer with an expired license who files a timely renewal application.

ATF believes that a promising solution is to develop and deploy an automated verification system similar to the FFL eZ Check system that allows one Federal Firearms Licensee (FFL) who has a copy of another FFL's license to verify or authenticate the license prior to shipping or disposing of a firearm(s) to the requesting licensee. ATF has already invested significant resources into developing a Federal Explosives License and Permit (FEL/P) eZ Check and believes that it should continue to do so.

ATF does not agree that providing a LOA to every buyer with an expired license who files a timely renewal application is advisable. The availability of an LOA to renewal applicants is prominently and clearly explained on the ATF website. See <http://www.atf.gov/explosives/how-to/renew-an-fel.html>. ATF processes approximately 220 license renewals per month.

Inspector General

Approximately 10-15% of renewal applicants request an LOA. ATF believes that renewal applicants are in the best position to determine whether or not they require an LOA. Determining when renewal applicants' license expires and sending an LOA irrespective of the renewal applicant's need or desire for an LOA is not an optimal use of ATF resources.

**Recommendation #6:** Conduct in-person inspections of all Explosives Pest Control Devices (EPCD) users or obtain the authority to issue licenses and permits valid only for EPCDs.

**ATF's Response:** Non-concur. ATF's assessment is that its current procedure for conducting inspections of EPCD users is the most cost-effective approach to ensuring public safety. ATF conducts telephone qualification inspections of EPCD users. During the telephone inspections, Industry Operations Investigators verify that the applicant has the required storage and ensure that the statutory requirements for licensing or permitting are met. If during the telephone inspection, ATF determines that the EPCD user intends to be involved with other types of explosives; the inspection is expanded to an in-person field visit. If Federal law were amended to allow the issuance of licenses and permits valid only for EPCDs, ATF would adapt its procedures accordingly.

**Recommendation #7:** Explore ways to obtain more out-of-business records within ATF's current legal authority.

**ATF's Response:** Concur. ATF will explore ways to obtain more out-of-business records within ATF's current legal authority.

Again, thank you for the opportunity to provide the above comments on the subject report.

  
B. Todd Jones

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## APPENDIX III: OIG ANALYSIS OF ATF RESPONSE

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The Office of the Inspector General provided a draft of this report to the Bureau of Alcohol, Tobacco, Firearms and Explosives for its comment. ATF's response is included in Appendix II to this report. The OIG's analysis of ATF's response and the actions necessary to close the recommendations are discussed below.

**Recommendation 1:** Ensure that the SEA mandate is fulfilled by tracking whether compliance inspections include a full examination of storage facilities.

**Status:** Resolved.

**ATF Response:** ATF concurred with this recommendation and stated that it will track in N-Spect whether compliance inspections include a full examination of storage facilities.

**OIG Analysis:** ATF's planned actions are responsive to our recommendation. Please provide documentation by July 8, 2013, of the changes ATF has made to N-Spect and how the tracking information will ensure that inspections fulfilled the SEA mandate.

**Recommendation 2:** Ensure that Investigators document the end date of the on-site portion of each inspection in N-Spect, ATF's inspection tracking system.

**Status:** Resolved.

**ATF Response:** ATF concurred with this recommendation and noted that its policies already require Investigators to document this information. ATF also plans to examine the feasibility and cost of upgrading N-Spect to prompt system users when this information is not recorded.

**OIG Analysis:** ATF's planned actions are responsive to our recommendation. Please provide an update by July 8, 2013, on ATF's planned upgrade to N-Spect, and documentation showing how ATF will ensure that its policy is fully followed in the interim.

**Recommendation 3:** Identify inspection data that would be useful for analysis of its explosives licensee inspection program, and of trends in the explosives industry, and develop methods for regularly collecting and analyzing this information.

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**Status:** Unresolved.

**ATF Response:** ATF did not concur with this recommendation. ATF stated that it does not believe analysis of its inspection data would be useful because the data it collects reflects only single points in time, and thus the aggregated inspection data are stale and have low information value. ATF also stated that the cost of improving its existing data system or acquiring a new one would be high. Finally, ATF stated that its current practice of identifying and responding to trends in the explosives industry through communication, collaboration, and outreach with the industry was the most efficient method of obtaining trend information.

**OIG Analysis:** ATF's response disagrees that further analysis of its inspection data would be useful to its explosives licensee inspection program. While we acknowledge that ATF's current methods of outreach and collaboration represent one way of identifying trends in the explosives industry, we remain concerned that relying on that method exclusively causes ATF to focus primarily on trends affecting explosives licensees that have both the resources and inclination to engage with ATF. Our report identifies numerous ways in which analysis of inspection results can enhance ATF's ongoing work as the industry's regulator, such as by ensuring that ATF can identify trends affecting the entire industry or relevant subsets of the industry, and by providing it with such basic industry information as the exact number of commercial explosives magazines in the United States or in a region. Further, the data from individual inspections can provide a useful aggregate summary of the issues and challenges Inspectors identify over time and enable ATF to work on these matters.

We agree that the cost of acquiring a new data management system would be high. However, during our review, ATF stated in writing that it was already studying its future data needs to implement "a wholly new system" for capturing and maintaining inspection and criminal investigation data.

We therefore believe ATF should incorporate a greater ability to conduct analysis of its inspection results into these ongoing plans for its next data management system. In the meantime, we believe that ATF should use other methods of examining inspection data, as practicable, to help determine what types of analytical capabilities would be useful in its future system.

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To close this recommendation as resolved, by July 8, 2013, please provide documentation on ATF's efforts to identify its future data needs with regards to inspections, as well as identify data already in N-Spect that would help illuminate the aggregate issues ATF needs to address with its explosives licensees.

**Recommendation 4:** Develop a method for tracking entities regardless of changing license numbers, such as assigning an identifying number to each licensee that remains consistent for the duration of the licensee's explosives operations.

**Status:** Resolved.

**ATF Response:** ATF partially concurred with this recommendation and agreed that tracking entities regardless of changes to their license numbers was a desirable goal. ATF proposed examining whether it could use employer identification numbers, Social Security numbers, or other information already collected in its Federal Licensing System for this purpose. ATF also proposed examining the feasibility and cost of assigning a unique identifier to each legal entity that applies for a license or permit.

**OIG Analysis:** ATF's planned actions are responsive to our recommendation. We agree that it is reasonable for ATF to first consider whether information it already collects in its Federal Licensing System would be useful in tracking legal entities regardless of their license numbers. Please provide documentation on the status of ATF's efforts to either repurpose or expand the tracking information in the Federal Licensing System by July 8, 2013.

**Recommendation 5:** Create a reliable, consistent, and efficient mechanism for explosives sellers to verify a buyer's authorization to purchase explosives, such as by providing a Letter of Authorization to every buyer with an expired license that files a timely renewal application.

**Status:** Resolved.

**ATF Response:** ATF partially concurred with this recommendation. ATF agreed that it is desirable to provide explosives sellers with a reliable, consistent, and efficient mechanism to verify a buyer's authorization to purchase explosives, but disagreed that automatically issuing Letters of Authorization is the most effective manner of doing so. ATF stated that it believes licensees are in the best

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position to determine whether they need a letter. ATF currently estimates that only 10 to 15 percent of renewal applicants request one.

ATF proposed developing and deploying an online verification system for explosives licenses similar to its FFL eZ Check website for federal firearms licensees (FFL). The eZ Check website allows one FFL to verify or authenticate another federal firearms license prior to shipping or disposing of a firearm to that potential buyer.

**OIG Analysis:** ATF's planned action is partially responsive to our recommendation. We agree that developing an explosives version of ATF's eZ Check website would be beneficial. However, FFL eZ Check shows only letters that ATF has issued. If an explosives licensee *qualified* for a letter, but did not *request* one, ATF's proposed explosives eZ Check website, if similar to the FFL eZ Check website, would still not indicate whether a buyer with an expired license is authorized to purchase explosives. We continue to believe that allowing any buyer to purchase explosives with an expired license without simultaneously providing explosives sellers with a reliable, consistent, and efficient mechanism to verify the buyer's authorization to make the purchase is unwise. If ATF does not wish to provide this safeguard, whether by providing the relevant information through an eZ Check website, issuing letters to all qualified licensees, or in another way, then we believe it should seek to eliminate the 45-day post-expiration date grace period in its regulations.

To close this recommendation as resolved, by July 8, 2013, please provide a schedule of ATF's plan to implement an explosives eZ Check website or other system to provide explosives sellers with a reliable, consistent, and efficient mechanism to verify a buyer's authorization to purchase explosives, including when relevant information confirming whether the buyer is authorized to purchase explosives after the expiration date of the buyer's license.

**Recommendation 6:** Conduct in-person inspections of all EPCD users or obtain the authority to issue licenses and permits valid only for EPCDs.

**Status:** Unresolved.

**ATF Response:** ATF did not concur with this recommendation. ATF stated that its current approach of inspecting EPCD end-users by telephone is the most cost-effective approach to ensuring public safety. ATF further stated that its Investigators are able to fully verify end-users' compliance over the telephone, and that they can conduct an in-person

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inspection if information from a call leads them to conclude that the end-user is also acquiring other types of explosives.

**OIG Analysis:** ATF's response disagrees with our recommendation to develop an alternative to the current telephone inspections of EPCD users. However, we continue to believe ATF needs to independently verify end-users' statements that they use only EPCDs since the permits they hold allow them to buy any type of explosive. Additionally, several ATF employees told us that they were concerned that end-users could state that their magazines were in compliance, but that an Investigator examining the magazines in person might disagree.

We recognize that ATF strives to use its limited resources in the most efficient manner possible. However, we note that ATF also told us that telephone inspections accounted for approximately 2 percent of the total number of explosives qualification and compliance inspections conducted in FY 2011 (85 of 4,504). We also continue to believe that, despite this relatively small percentage of users who are subject only to telephone inspections, the potential for these EPCD users to purchase and use other types of explosives and yet avoid in-person inspections represents a significant gap in ATF's explosives licensee inspection program.

To close this recommendation as resolved, please provide documentation that ATF has changed its policy regarding telephone inspections by July 8, 2013.

**Recommendation 7:** Explore ways to obtain more out-of-business records within ATF's current legal authority.

**Status:** Resolved.

**ATF Response:** ATF stated that it would explore ways to obtain more out-of-business records within its current legal authority.

**OIG Analysis:** ATF's planned actions are responsive to our recommendation. Please provide an update by July 8, 2013, describing the options ATF considered to collect more out-of-business records, and the option ATF chose.