



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

Review of ATF's Federal Firearms Licensee Inspection Program

April 2013

I-2013-005

EXECUTIVE DIGEST

INTRODUCTION

The Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) enforces federal firearms laws, in part, by issuing federal firearms licenses, by conducting regulatory inspections of the more than 123,500 Federal Firearms Licensees (FFL), and by conducting criminal investigations of FFL violations.¹

In a July 2004 review, the Office of the Inspector General (OIG) concluded that ATF's Inspection Program was not fully effective in ensuring that FFLs comply with federal firearms laws because inspections were infrequent and of inconsistent quality, and follow-up inspections and adverse actions had been sporadic.² Also, ATF did not conduct in-person inspections on all applicants before licensing them to sell guns.

In this follow-up of the OIG's 2004 review, we assess ATF's FFL Inspection Program and its ability to effectively enforce federal firearms laws.

RESULTS IN BRIEF

We found that, since 2004, ATF has made a series of changes and improvements to its inspection processes and increased outreach activities to the firearms industry, including by:

- standardizing policies and procedures for qualification and compliance inspections;
- instituting a requirement for gathering pre-inspection intelligence for qualification and compliance inspections;
- reducing the number of qualification inspections done by telephone instead of in person, from 597 in fiscal year (FY) 2005 to 21 in FY 2011;

¹ The *Gun Control Act of 1968* (18 U.S.C. § 921 et seq.) requires individuals or a company engaged in the firearms business to have a license and establishes legal restrictions on who can possess firearms.

² U.S. Department of Justice Office of the Inspector General, *Inspections of Firearms Dealers by the Bureau of Alcohol, Tobacco, Firearms and Explosives*, Evaluation and Inspections Report I-2004-005, July 2004.

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- implementing a field division discretionary investigative initiative to prioritize compliance inspections of FFLs that have been identified by ATF as high risk;³ and
 - establishing outreach goals for the field divisions and working with advocacy groups to improve education efforts.

However, we also found several areas where ATF needed to improve its performance, which we briefly discuss below.

ATF did not meet its goal of inspecting all FFLs on a cyclical basis, resulting in over 58 percent of FFLs not being inspected within 5 years.

We found that ATF still had not met its goal of inspecting all FFLs on a 3- or 5-year cyclical basis. Between FY 2007 and FY 2012, over 58 percent of FFLs (73,204 out of 125,481) had not been inspected for 5 years. As a result, non-compliant FFLs go undetected by ATF for many years. One reason for this was insufficient investigator resources. In FY 2010, ATF had 940,500 available investigator hours to complete all types of inspections, but based on data from ATF indicating how long it took (on average) for investigators to complete inspections, ATF would have needed 1,140,139 investigator hours to complete 5-year cyclical compliance inspections alone, a shortfall of 199,639 hours.⁴ We found that other competing priorities, such as federally mandated Federal Explosives Licensee inspections, have left ATF unable to meet this important goal.

ATF did not track whether high-risk FFL inspections met annual operating plan priorities.

We found that ATF did not track whether the FFL inspections it conducts met the high-risk priority it laid out each fiscal year in its annual operating plan. No fields or codes exist within the inspections case management system that can be used to identify which opened inspections corresponded to the high-risk discretionary initiative in the operating plan. While ATF implemented a discretionary initiative in its operating plan that includes compliance inspections of high-risk FFLs, ATF does not know, and we were unable to determine, whether ATF had

³ ATF field divisions may classify an FFL as “high risk” because of indicators such as a high number of crime guns traced to a purchase from the licensee, numerous multiple sales or multiple sales of guns used in crimes, thefts or losses of firearms, location in a high-crime or border area, and tips from law enforcement.

⁴ See Appendix IV for the number of investigators and FFLs in each of ATF’s 25 field divisions, the investigator hours needed, and the available investigator hours.

in fact given priority to high-risk FFL inspections, how many high-risk FFLs were inspected, or how long high-risk FFLs had gone between inspections.

ATF did not ensure that administrative actions were not unduly prolonged after cases moved to Division Counsels for review.

We found that ATF revised its administrative action policy to assist field division personnel in their effort to ensure that consistent and appropriate determinations are made regarding whether to revoke a license or take some other action when an FFL is found to have violated federal firearms laws. The revised policy allows more non-compliant FFLs the opportunity to make changes to their operations to become compliant. Nonetheless, we found that in those situations where ATF concluded that revocation for a non-compliant FFL was the appropriate remedy, the administrative action process remained lengthy (sometimes lasting over 2 years). We determined that the time ATF takes to process revocations is prolonged after recommendations for revocation are sent for Division Counsel review. According to ATF, factors that prolong the review include revocations that are not pursued when law enforcement actions are initiated against the licensee during Division Counsel review and the Division Counsels' need to get additional information in some instances to support revocations. ATF staff also stated that insufficient staffing was a reason that the Division Counsel review was a challenge. Because FFLs are permitted to sell firearms during the revocation process, it is imperative that ATF process revocations with all appropriate speed, while at the same time taking into account the need for careful review of the proposed decision.

CONCLUSION AND RECOMMENDATIONS

Since 2004, ATF has made a series of changes to its Inspection Program that have resulted in an improved program but, because of certain weaknesses we identified, additional actions are needed for ATF to fully achieve its goal of keeping communities safe and secure by detecting and preventing the sale of firearms to individuals who are prohibited from possessing them. We made four recommendations to ATF to ensure that ATF can meet its operating plan requirement to conduct a follow-up compliance inspection within 12 months of a telephone qualification inspection, can meet its goal to perform FFL cyclical compliance inspections in a timely fashion, can adequately track when high-risk inspections are opened to meet operating plan priorities, and can process revocations in an appropriately prompt manner.

TABLE OF CONTENTS

BACKGROUND 1

SCOPE AND METHODOLOGY OF THE OIG REVIEW..... 11

RESULTS OF THE REVIEW..... 13

CONCLUSION AND RECOMMENDATIONS 35

APPENDIX I: FIELD OPERATIONS AND FIELD DIVISION
ORGANIZATION CHART 37

APPENDIX II: PRE-INSPECTION INTELLIGENCE COLLECTION
STEPS..... 38

APPENDIX III: FY 2012 INDUSTRY OPERATIONS INVESTIGATOR
STAFF ESTIMATES, FOR ALL INSPECTIONS, RANKED BY
SIZE OF SHORTAGE 39

APPENDIX IV: WORK HOURS AVAILABLE AND NEEDED FOR
FFL 5-YEAR CYCLICAL COMPLIANCE INSPECTIONS
IN FY 2010 40

APPENDIX V: ATF RESPONSE TO DRAFT REPORT 41

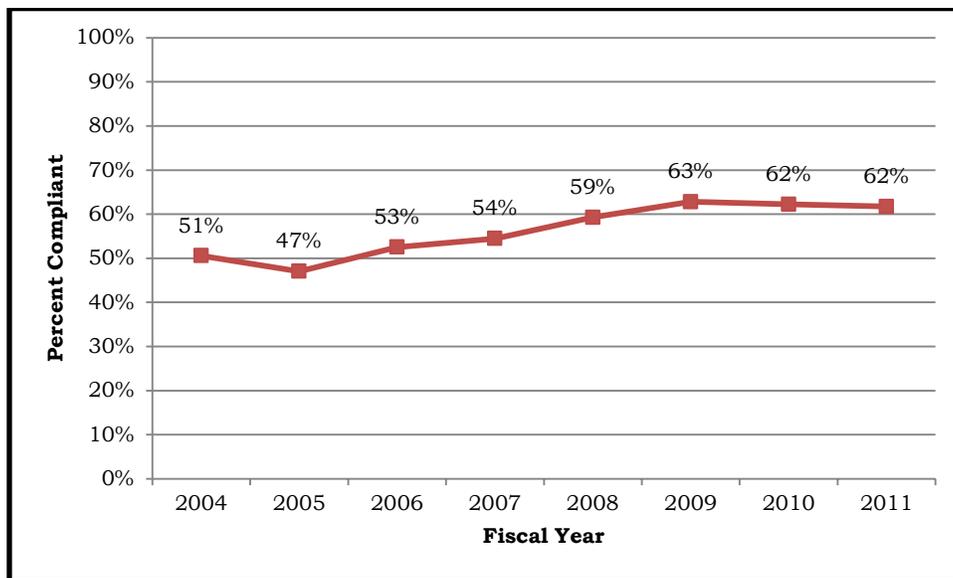
APPENDIX VI: OIG ANALYSIS OF ATF RESPONSE 44

BACKGROUND

Introduction

The Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) enforces federal firearms laws, in part, by issuing firearms licenses and overseeing a program that conducts regulatory inspections of Federal Firearms Licensees (FFL), of which there were 123,587 at the end of fiscal year (FY) 2011, according to ATF. The Inspection Program’s goals are to ensure that only qualified individuals receive licenses to sell guns, to educate FFLs about federal firearms laws, and to increase “compliance with firearms laws in order to prevent the transfer of firearms to those prohibited from having them.”⁵ ATF’s regulatory inspections seek to ensure that FFLs follow federal firearms laws that ban sales to prohibited persons and require inventory and sales to be tracked. In FY 2011, ATF performed 10,416 inspections of FFLs, and 62 percent (6,429) of the FFLs were found to be compliant with federal firearms laws. Figure 1 shows the percentage of FFLs from FY 2004 to FY 2011 found to be in compliance with federal firearms laws following an ATF inspection.

Figure 1: Percentage of FFLs in Compliance, FY 2004 through FY 2011



Source: ATF N-Spect data.

⁵ U.S. Department of Justice, Bureau of Alcohol, Tobacco, Firearms and Explosives, *Strategic Plan: Fiscal Years 2004–2009*, 5.

Additionally, between 2004 and 2011, FFLs had 174,679 firearms stolen or lost from their inventories, according to ATF.⁶ Table 1 shows the number of stolen and lost firearms by type between 2004 and 2011.

Table 1: FFL Thefts and Losses from 2004 through 2011

Firearm Types	2004	2005	2006	2007	2008	2009	2010	2011	Total Firearms Stolen/Lost by Type
Handguns	8,257	13,016	10,165	11,905	13,364	7,528	10,279	8,449	82,963
Long Guns	7,118	11,666	11,030	14,286	12,136	8,478	10,470	8,096	83,280
Others	222	885	372	1,157	1,143	893	1,880	1,884	8,436
Total	15,597	25,567	21,567	27,348	26,643	16,899	22,629	18,429	174,679

Note: Handguns consist of semiautomatic pistols, revolvers, and derringers. Long guns consist of shotguns and rifles. All other firearms are accounted for in the “other” category.

Source: ATF data as of February 7, 2013.

This report is a follow-up to a 2004 Office of the Inspector General (OIG) review that focused on how ATF selected FFLs for inspection, the frequency and quality of ATF’s inspections, and the enforcement actions ATF took against FFLs that violated federal firearms laws.⁷ The previous review found that ATF’s inspections were infrequent and of inconsistent quality. In addition, the follow-up inspections and adverse actions ATF took against FFLs were sporadic.⁸ The OIG made nine recommendations to help improve the program, including developing a standard inspection process, revising staffing, improving the comprehensiveness of crime gun tracing by law enforcement agencies, and creating a tracking system to monitor the progress and timeliness of FFL denials and revocations. These recommendations have been implemented by ATF since our earlier review.

In this follow-up report, we discuss the changes ATF made to its FFL Inspection Program since 2004, the shortfalls in meeting its goals for

⁶ FFLs must report to ATF each missing, lost, or stolen firearm within 48 hours of discovery. In addition, the FFL must report the firearm theft or loss to the appropriate local law enforcement agency.

⁷ U.S. Department of Justice Office of the Inspector General, *Inspections of Firearms Dealers by the Bureau of Alcohol, Tobacco, Firearms and Explosives*, Evaluation and Inspections Report I-2004-005 (July 2004).

⁸ ATF Order 5370.1A changed the term “adverse action” to “administrative action” in 2009. Administrative actions include warning letters, warning conferences, license revocations, and denials of license renewal.

the program, the changes ATF made to its administrative action process since 2004, and the problems still remaining in that process. In the remainder of this background section, we describe firearms licensing requirements and the processes ATF has used to try to ensure those requirements were met.

Federal Firearms Licensing Requirements and Operations

In the *Gun Control Act of 1968*, Congress required individuals and companies engaged in the firearms business to be licensed and established legal restrictions on who could possess firearms.⁹ An applicant for a federal firearms license to make or sell firearms must be at least 21 years old, not be prohibited from having a firearm, and must notify the “chief law enforcement office of the locality in which the premises are located” that the applicant intends to apply for a license.¹⁰ The applicant must provide a photograph, fingerprints, the application fee, and a statement certifying that their business is in compliance with applicable laws.

Applications for federal firearms licenses are submitted to ATF’s Federal Firearms Licensing Center, which forwards them to field divisions that assign investigators from Industry Operations to conduct qualification inspections of the applicants. The qualification inspection includes an in-person interview with the applicant to discuss federal, state, and local requirements, as well as to ensure that all information on the application is current and correct. Industry Operations submits its inspection report to the Federal Firearms Licensing Center, including a recommendation as to whether the license should be issued or denied, and the Federal Firearms Licensing Center then determines the applicant’s eligibility and issues a license or notifies the applicant of its denial.¹¹

FFLs are required to verify that potential customers are not prohibited from possessing a firearm and are residents of the state in which the FFL is located. In the *Brady Handgun Violence Prevention Act*

⁹ The *Gun Control Act of 1968* was codified at 18 U.S.C. 44.

¹⁰ Under the *Gun Control Act*, firearms possession is prohibited for certain individuals, such as those with a felony conviction, illegal aliens and aliens lawfully admitted under non-immigrant visas, those with a prior domestic assault conviction, fugitives from justice, or unlawful users of controlled substances.

¹¹ Denials can be based on reasons that include a failure to comply with state or local law (such as zoning ordinances), evidence of previous willful violations of the *Gun Control Act*, or falsification of an application.

of 1993, Congress required FFLs to contact the Federal Bureau of Investigation (FBI) or a state agency (if applicable) to request that the National Instant Criminal Background Check System (NICS) be queried to confirm that potential customers are not prohibited from purchasing firearms.¹² Customers purchasing firearms must complete a Firearms Transaction Record (Form 4473), which asks for information about the purchaser and the firearm purchased.¹³ FFLs are required to retain these forms and maintain an Acquisition and Disposition Book (A&D Book) that logs all firearms acquired and sold. FFLs must report to ATF sales of multiple handguns to the same purchaser, if purchased within 5 consecutive business days.¹⁴

While the A&D Book is referred to as a “bound book,” FFLs have the option to use an alternative method, such as a computerized A&D Book system. FFLs need the approval of ATF to use such an alternative system, and the alternative system must meet the regulatory requirement that it record specified pertinent information in a permanent form. ATF has determined that the use of a computerized system satisfies the standard of permanency and is substantially equivalent to paper records. Additionally, the system must be able to retain any correction of errors as an entirely new entry, without deleting or modifying the original entry, so as to allow an audit trail for ATF investigators.¹⁵

ATF’s FFL Inspection Program

Inspection Staffing Structure

ATF implements its FFL Inspection Program through Industry Operations, a regulatory enforcement section under the Office of Field Operations, which also houses the Criminal Enforcement section. At ATF headquarters, the Deputy Assistant Director of Industry Operations, who reports to the Assistant Director for Field Operations, is responsible for directing and coordinating both the Federal Explosives and FFL

¹² 18 U.S.C. § 922(s).

¹³ This form is at <http://www.atf.gov/forms/download/atf-f-4473-1.pdf>.

¹⁴ 18 U.S.C. § 923(g). Additionally, ATF requires FFLs in Arizona, California, New Mexico, and Texas to submit records concerning the multiple sales of semi-automatic rifles capable of accepting a detachable magazine with a caliber greater than .22 to the same unlicensed person.

¹⁵ 27 C.F.R. Part 478, Subpart H, and ATF Ruling 2008-2.

Inspection Programs at the field division and the national level. (See Appendix I for an organization chart.)

Each of ATF's 25 field divisions is headed by a Special Agent in Charge, who oversees a Director of Industry Operations (DIO). Under the DIO's supervision, Area Supervisors manage local units of the field division called field offices. Field offices are staffed by Industry Operations investigators who are responsible for conducting firearms inspections, legally mandated explosives dealer inspections, and outreach to the firearms industry. ATF reported that at the beginning of FY 2011, it had 624 Industry Operations investigators assigned to its 25 field divisions. These investigators do not have the authority to arrest individuals, do not carry firearms, and do not conduct criminal or undercover investigations. Each field division also has at least one Division Counsel who is consulted in assessing administrative actions that deal with revocations, alternatives to revocations, and denials of license renewal. The Division Counsels report to the Deputy Chief Counsel for the Field at headquarters, who, in turn, reports to ATF's Chief Counsel.

FFL Inspection Types

As part of the FFL Inspection Program, ATF generally conducts two types of inspections:

- *Qualification inspections* – Industry Operations investigators conduct qualification inspections (previously known as application inspections) to determine whether applicants qualify for federal firearms licenses, meet all state and local “conduct of business” requirements, and are educated about FFL responsibilities under federal firearms laws. Since 2006, investigators have been required to conduct qualification inspections in person or, if that cannot be done, to conduct an in-person compliance inspection (described below) within 1 year of the telephone qualification inspection. In 2010, ATF added further requirements for qualification inspections, including having the investigator notify the Deputy Assistant Director for Industry Operations whenever a qualification inspection has to be conducted over the telephone.¹⁶

¹⁶ In addition, the ATF Field Operations Operating Plan for FY 2011 provides that the follow-up report after an onsite compliance inspection must document why an onsite qualification inspection was not previously conducted.

The OIG's 2004 review found that qualification inspections were often conducted by telephone.¹⁷

- *Compliance inspections* – Industry Operations investigators conduct compliance inspections to examine whether an FFL is in compliance with federal firearms laws and to verify that the FFL is accurately maintaining the required forms and an A&D Book.¹⁸ ATF sets a 3- or 5-year compliance inspection cycle for FFLs depending on whether an FFL is in a “source” or “non-source” state. ATF identifies a state as a “source” state or a “non-source” state by the number of firearms sold or recovered at crime scenes as determined by trace requests submitted to the National Tracing Center. “Source” states are those where crime guns are first purchased, and “non-source” states are ones to which crime guns have traveled. Compliance inspections also can be initiated based on: (1) a set of criteria that identifies the FFL as high risk or a priority or (2) a special request from ATF headquarters units or the ATF Criminal Enforcement section.¹⁹ Except in limited circumstances, ATF is prohibited by law from inspecting an FFL more than once a year.²⁰

If a compliance inspection reveals violations that can be corrected with education and improved FFL record keeping, Industry Operations schedules a recall inspection. Recall inspections are follow-up compliance inspections that by federal regulation may be conducted no earlier than 1 year after the initiation of the deficient compliance inspection, unless an FFL agrees to an earlier inspection. Investigators can either conduct a limited scope recall inspection with a focus on the areas cited in the previous compliance inspection or expand the inspection to a full scope recall inspection to determine if the FFL

¹⁷ U.S. Department of Justice Office of the Inspector General, *Inspections of Firearms Dealers by the Bureau of Alcohol, Tobacco, Firearms and Explosives*, Evaluation and Inspections Report I-2004-005 (July 2004).

¹⁸ Once a compliance inspection is completed, ATF determines if the FFL is “in compliance,” “not in compliance,” or “at risk.” “In compliance” means that an FFL has no violations or minimal violations that are outlined in a Report of Violations and do not require administrative action. “Not in compliance” means that an FFL has violations that require an administrative action. In FY 2010, ATF added the “at risk” category, which means an FFL may face administrative action if it continues to be non-compliant.

¹⁹ The criteria ATF uses to determine if an FFL is high risk are discussed in the Inspection Priorities section.

²⁰ *Firearms Owners Protection Act of 1986*, 18 U.S.C. § 923(g).

improved its compliance or remains non-compliant with federal firearms laws.

FFL Administrative Action Process

When violations are found during a compliance inspection, the Industry Operations investigators can issue a report of violations or recommend administrative action. A report of violations is used for all infractions and describes the violation cited and requires a corrective action and response by the FFL. For violations such as a missing ZIP code on a Form 4473, the report tells the FFL what to correct but does not require additional action by ATF. Violations such as inventory discrepancies, failing to record firearms in the A&D Book, missing or improperly filled out Form 4473s, or failures to complete background checks (NICS checks) require Industry Operations investigators to make a recommendation for an administrative action. Based on the severity and frequency of these violations, ATF can institute a series of administrative actions that are described below in increasing order of severity.²¹

- *Warning letters* – ATF sends a letter to the FFL that outlines violations found during the inspection, the need to correct the violations, and the potential for revocation of the license if the licensee does not come into compliance. A recall inspection is discretionary, although if ATF decides to perform a recall inspection the recall inspection can be performed no earlier than 1 year after the initiation of the last inspection, unless permitted by the FFL.
- *Warning conferences* – ATF requires the FFL to meet with the DIO or Area Supervisor at an ATF office to discuss the violations, corrective actions, and the potential for revocation. In addition, a recall inspection must be conducted by ATF, although the recall inspection can be performed no earlier than 1 year after the initiation of the last inspection, unless permitted by the FFL.
- *Revocations or denials of license renewal* – ATF revokes the FFL’s license or denies an application to renew the license. These actions are reserved for FFLs with severe or repeated violations that are deemed willful or disregard legal obligations.

²¹ ATF Order 5370.1A, Federal Firearms Administrative Action Policy and Procedures, October 30, 2009.

When the Industry Operations investigator recommends revoking a license or denying its renewal, an Area Supervisor reviews the report and forwards it for additional review by the DIO, who ultimately serves as the deciding official. Before the DIO can issue an initial notice of revocation or an alternative to revocation, or denies renewal of a license, the DIO must consult with Division Counsel for input and assistance with assessing the appropriateness of administrative action. This review by the DIO and Division Counsel must occur before an initial notice of revocation or denial can be sent to the FFL. According to ATF policy, the Deputy Assistant Director for Industry Operations also reviews all proposed revocations and denials to ensure consistent implementation of ATF policy.

ATF's administrative action policy allows DIOs to recommend less severe alternatives, such as a warning conference, a warning letter, or an agreement with the FFL, such as suspension of license for a limited time to correct violations. DIOs must base the decision to recommend less severe alternatives on the following factors: whether the FFL agrees to conditions in addition to those imposed by law, including suspension of business operations, implementation of a compliance plan, or allowing Industry Operations investigators to conduct additional inspections.

If ATF issues an initial notice of revocation, an FFL has 15 days to request an administrative hearing; otherwise the license is revoked. If an FFL requests a hearing, an ATF Hearing Officer examines the facts, hears testimony from ATF and FFL witnesses, and then prepares a report of findings and recommendations for the DIO. After receiving the Hearing Officer's report, the DIO may allow the FFL to retain the license or may issue a final notice of revocation. If a final notice of revocation or denial of license renewal is issued, the FFL has 60 days to appeal to U.S. District Court.

Referrals to Criminal Enforcement

During inspections, if an Industry Operations investigator finds suspected criminal violations, including knowingly permitting straw purchases, dealing firearms without a license, or knowingly providing firearms to prohibited persons, the investigator prepares a referral to ATF's Criminal Enforcement section (or another law enforcement agency). The investigator also submits information and documents for the Industry Operations case management system, N-Spect. If approved by an Area Supervisor, a criminal referral is forwarded to the appropriate Field Intelligence Group, which determines whether there is actionable intelligence and, if so, which law enforcement entity should receive the referral information. According to ATF's data, Industry Operations

investigators made 2,563 referrals to the Criminal Enforcement section in FY 2011.

Inspection Priorities

In response to a 2004 OIG recommendation, ATF focuses its compliance inspections on high-risk FFLs. In 2004, the OIG found that ATF was unable to complete its cyclical inspections on a 3- or 5-year basis. Given this inability, the OIG recommended that ATF use tracing data and other intelligence to determine which FFLs were at highest risk for violating federal firearms laws and to conduct inspections of these high-risk FFLs separate and apart from the cyclical inspections. ATF satisfied the recommendation by identifying high-risk FFLs based upon a series of risk indicators, such as a high number of guns that were used in crimes being traced to the licensee, numerous multiple sales by an FFL to a single individual, theft or loss of firearms, NICS denial ratios, location in a high-crime or border area, and tips from state and local law enforcement.²² The list of risk indicators is in ATF's annual operating plans. The annual operating plans for Industry Operations, and other directives issued by ATF headquarters to the field divisions, describe the importance of prioritizing high-risk inspections.

As part of its efforts to focus compliance inspections on high-risk FFLs, in 2004, ATF developed the Firearms Disposition Emphasis Inspection Program. The program focuses compliance inspections on specific areas of FFL business operations that may lead to the discovery of illegal firearms diversion and trafficking. For example, to determine if FFLs are violating federal firearms laws, ATF may direct Industry Operations investigators to conduct inspections of FFLs in a particular area that sell a high number of weapons known to be favored by criminals.

Outreach Activities

ATF's Industry Operations also conducts outreach and education efforts for FFLs and the firearms industry. These efforts include distributing pamphlets, staffing information booths at gun shows, holding seminars, and conducting other industry events. In FY 2011, Industry Operations investigators participated in 521 such firearms industry outreach activities. In addition, ATF personnel work with state and local law enforcement agencies, schools, and large chain retail stores

²² The NICS denial ratio is the number of NICS checks performed versus the number of checks returned indicating that individuals are prohibited from owning firearms.

to present seminars on firearms laws. ATF considers outreach a vital part of the FFL Inspection Program and, in FY 2010, ATF established performance goals for each field division to conduct outreach activities at a minimum number of gun shows. ATF has also worked with the National Shooting Sports Foundation to develop information packets for a “Don’t Lie for the Other Guy” campaign that helps FFLs prevent straw purchases and identify firearms traffickers.

Additional Industry Operations Investigator Duties

In addition to conducting FFL inspections and outreach, Industry Operations investigators are responsible for conducting compliance and qualification inspections of ATF’s Federal Explosives Licensees (FEL). The FEL program is mandated by law to ensure that only qualified persons are licensed to manufacture, import, and deal in explosives; to educate license and permit holders about applicable explosives laws; and to increase the rate of compliance with federal explosives laws.²³ The FEL and FFL Inspection Programs work in tandem, using the same staff and resources to accomplish both FEL and FFL program goals. A provision in the *Safe Explosives Act* requires ATF to perform onsite inspections of all FELs at least once every 3 years, with certain exceptions, to determine compliance with federal explosives storage regulations.²⁴ No similar statutory provision exists mandating inspections of FFLs at set intervals. As a result, ATF’s annual operating plans instruct field divisions to prioritize FEL inspections ahead of FFL inspections.

²³ ATF’s authority to regulate the explosives industry began with the *Organized Crime Control Act of 1970*, which established licensing and permitting requirements, defined categories of people who should be denied access to explosives, and allowed ATF to inspect licensees, and was codified at 18 U.S.C. §§ 841-848. The *Safe Explosives Act* expanded these provisions in 2003 and amended portions of 18 U.S.C. §§ 841-845. Federal regulations regarding FELs can be found in 27 C.F.R. Part 555.

²⁴ U.S. Department of Justice Office of the Inspector General, *Review of the Bureau of Alcohol, Tobacco, Firearms and Explosives’ Implementation of the Safe Explosives Act*, Evaluation and Inspections Report I-2005-005 (March 2005), and *Review of the Bureau of Alcohol, Tobacco, Firearms and Explosives’ Explosives Inspection Program*, I-2013-004 (April 2013).

SCOPE AND METHODOLOGY OF THE OIG REVIEW

Scope

This review examined the changes ATF made in the program since 2004, including the process and standards for inspecting FFLs and the changes made to the administrative action policy. We examined data from FY 2004 through FY 2011, except as otherwise noted. We also compared the data from the OIG's 2004 review (FY 2002 data) with FY 2011 data. We conducted fieldwork from July 2010 through May 2012.

Methodology

In this review we conducted in-person and telephone interviews, reviewed documents, analyzed ATF data, and asked Directors of Industry Operations to complete a questionnaire. We visited ATF headquarters, ATF headquarters units in Martinsburg, West Virginia, and field divisions in Columbus, Ohio, and Kansas City, Missouri.

Interviews

We interviewed a total of 159 officials and staff members at ATF headquarters and field division offices. These interviews provided background and context for ATF's strategic goals and priorities for the FFL Inspection Program, including the identification and prioritization of high-risk FFLs for inspection. We also interviewed representatives from the firearms industry and other advocacy groups.

Data Analyses and Document Reviews

We analyzed FFL inspections data from FY 2004 through FY 2011 in the following categories: inspections, Industry Operations investigator hours spent on inspections, violations, referrals, and recommendations for administration actions. We examined data for all types of FFLs.²⁵

²⁵ There are nine types of federal firearms licenses: Type 1 - Dealer in firearms other than destructive devices (includes gunsmiths); Type 2 - Pawnbroker in firearms other than destructive devices; Type 3 - Collector of curios and relics; Type 6 - Manufacturer of ammunition for firearms; Type 7 - Manufacturer of firearms other than destructive devices; Type 8 - Importer of firearms other than destructive devices; Type 9 - Dealer in destructive devices; Type 10 - Manufacturer of destructive devices; and Type 11 - Importer of destructive devices. Retail gun dealers have Type 1 or Type 2 licenses. Types 4 and 5 are unassigned.

This data came from ATF's Industry Operations case management system, N-Spect, and included information about each type of FFL inspection in the study period. We also analyzed data from ATF's revocation and denial of license renewal tracking spreadsheet, which allowed us to estimate times for the steps in the administrative action process for FFLs.

We reviewed ATF policies, guidelines, and plans relating to the FFL Inspection Program. We also reviewed ATF budget requests and federal firearms laws.

Site Visits

We selected the two field divisions we visited based on criteria that included: (1) number of firearms traced, (2) number of firearms recovered, (3) firearms trafficking patterns, (4) size of FFL population and types of FFLs, (5) staffing of field division, and (6) geographic size of field division. In addition, ATF suggested we visit a field division that had senior staff with extensive experience in Industry Operations. Since another OIG team had recently visited and reviewed four field divisions in the Southwest border region for the Project Gunrunner report, we did not include those four in our analysis.²⁶ Based on all these criteria, we selected Columbus, Ohio, and Kansas City, Missouri, for the site visits. The site visits allowed us to observe FFL inspections in person, as well as to observe how program policies are put into practice in the field. We were also able to conduct interviews with ATF staff at all levels and gather additional documents for analysis.

²⁶ U.S. Department of Justice Office of the Inspector General, *Review of ATF's Project Gunrunner*, Evaluation and Inspections Report I-2011-001 (November 2011).

RESULTS OF THE REVIEW

Since 2004, ATF has made improvements to its inspection process and increased outreach activities to the firearms industry. In addition, ATF’s administrative action policy was revised to provide more flexible and consistent guidance, and ATF instituted a review process to ensure that revocation criteria were consistently applied across field divisions. However, our review also found that:

- **ATF has not met its goal of inspecting all FFLs on a cyclical basis, resulting in over 58 percent of FFLs not being inspected within 5 years;**
- **although ATF’s annual Industry Operations operating plan prioritized which FFLs were to be inspected, ATF did not track whether high-risk FFL inspections met annual operating plan priorities; and**
- **the administrative action process was significantly prolonged after revocation cases were submitted for Division Counsel review.**

Since 2004, ATF has made improvements to its inspection processes and increased outreach activities to the firearms industry.

In 2004, the OIG found that ATF FFL inspection policies and procedures were not standardized and each field division seemed to follow different inspection guidelines. The OIG recommended that ATF develop a standard, streamlined inspection process that included more efficient inventory and records reviews, automated inspection reporting, and consistent examination of indicators of firearms trafficking. The OIG also recommended all FFL applicants receive in-person application inspections (now referred to as “qualification inspections”).

In response to the OIG’s recommendation, ATF standardized FFL inspection policies and procedures for performing FFL qualification and compliance inspections. In addition, ATF requires its investigators to conduct pre-inspection intelligence gathering, and it has vastly increased the number of in-person qualification inspections. ATF also prioritized targeted inspections of FFLs at a high risk for violating federal firearms laws. In an effort to educate FFLs about firearms laws, ATF also increased outreach to the firearms industry. Further, ATF directed that all qualification inspections be conducted in person or, if that cannot be

done, that an in-person compliance inspection be conducted within 1 year of a telephone qualification inspection. Investigators must notify the Deputy Assistant Director for Industry Operations of any telephone inspections they conduct and explain why an in-person inspection could not be conducted in the follow-up inspection reports.

ATF standardized the policies and procedures for FFL inspections.

In 2008, ATF issued an updated Industry Operations Handbook standardizing the procedures and steps for all types of firearms inspections, as well as other Industry Operations initiatives.²⁷ These procedures are required to be followed by investigators when performing qualification and compliance inspections. Our review of the Handbook found that it describes the procedures and steps for all types of firearms inspections, as well as other Industry Operations initiatives. The text box provides examples of what the Industry Operations Handbook contains.

The updated Industry Operations Handbook also requires investigators to collect and analyze intelligence prior to conducting qualification and compliance inspections. This information assists investigators in preparing for a qualification inspection by determining if an applicant meets the requirements to operate as an FFL and can identify any potential areas for further inquiry, including whether an applicant has any other licenses or whether an applicant has a business association with someone who has previous or current adverse actions under other federal firearms licenses.

Examples of Industry Operations Handbook Content

- Requirements for pre-inspection intelligence gathering, instructions on how to gather and analyze intelligence, and which reports and intelligence should be collected.
- A Full Firearms Inspection Quick Reference Guide that outlines all the steps for compliance and qualification inspections.
- Instructions on how to review Form 4473s and A&D Books to identify possible criminal violations.
- Instructions on when just a sample of firearms and transaction records can be inspected and how to take a valid sample.
- Instructions on when a recall inspection should be expanded from a limited to a full scope inspection.
- Guidance on sharing intelligence with Industry Operations and Criminal Enforcement personnel.
- Detailed instructions on how to refer suspected criminal information and what types of information to refer.

²⁷ The ATF Industry Operations Handbook, ATF H 5030.2C, February 2008, updated the ATF Regulatory Enforcement Inspector Handbook, ATF H 5030.2B, September 1996.

For compliance inspections, pre-inspection intelligence gathering allows investigators to better plan the inspection and assists in identifying potential areas of concern on which investigators can focus during an inspection. Also, by researching the FFL's prior inspection history, an investigator can estimate the size of the inventory and request additional staff or resources if needed to complete the inspection. Additionally, the multiple sales reports that investigators review may indicate that an FFL sells a large number of firearms that are considered crime guns in the area. This could be an indicator of firearms trafficking or simply information to help ATF determine where criminals are obtaining firearms. Appendix II shows the types of pre-inspection intelligence steps that investigators are directed to follow prior to a qualification or compliance inspection.

We found that the pre-inspection intelligence-gathering process has been implemented and is being followed by investigators. For the cases we reviewed, we found that the investigators were recording information in the inspection files. In addition, all the investigators we interviewed could articulate the proper procedures and steps for both qualification and compliance pre-inspection intelligence gathering. Furthermore, during our site visits, we accompanied investigators on three compliance inspections and found that the investigators followed the procedures and steps outlined in the Industry Operations Handbook.²⁸

ATF conducted in-person qualification inspections, except in rare circumstances.

In 2004, the OIG found that ATF did not conduct in-person qualification inspections on all new FFLs to verify applicant information and ensure they understood firearms laws.²⁹ Qualification inspections are used to verify that applicants are eligible for a license and assist in deterring applicants that might pose a risk to public safety if they possessed a license. Qualification inspections are the first contact an Industry Operations investigator has with a potential FFL, and the inspection is an opportunity for ATF to educate applicants about firearms laws prior to permitting them to operate a firearms business.

In 2006, ATF directed that all qualification inspections be conducted in person and, in those circumstances where the investigator

²⁸ We observed two compliance inspections in the Kansas City field division and one in the Columbus field division.

²⁹ OIG, *Inspections of Firearms Dealers*, 17.

is unable to conduct the inspection in person, required that a follow-up in-person compliance inspection be conducted within 12 months of a telephone qualification inspection.³⁰ Neither ATF's operating plans nor the Industry Operations Handbook outline the circumstances where it would be appropriate to conclude that an inspection cannot reasonably be done in person. In 2010, ATF added further requirements for qualification inspections – an investigator must notify the Deputy Assistant Director for Industry Operations when a qualification inspection has to be conducted over the telephone and, if an onsite inspection cannot be conducted, the investigator must explain why in the follow-up inspection report.³¹ We were told by ATF that a telephone inspection would be allowed, for example, when the location of an applicant is 8 hours or more from the nearest ATF field office and it would be more efficient to send an investigator to an area when there is additional work to conduct.

As a result of these changes, the percentage of qualification inspections conducted by telephone decreased dramatically. In FY 2005, 11 percent (597 of 5,645) of qualification inspections were done by telephone. In FY 2011, telephone qualification inspections made up only 0.2 percent (21 of 9,378) of all qualification inspections. Table 2 presents the number and type of qualification inspections from FY 2004 through FY 2011.

³⁰ ATF Industry Operations Handbook, ATF H 5030.2C, February 2008.

³¹ ATF Field Operations Operating Plan FY 2011, October 2010, 13.

Table 2: Qualification Inspections Done by Telephone as a Percentage of All Qualification Inspections, FY 2005 through FY 2011

Inspection Type	2005	2006	2007	2008	2009	2010	2011
Conducted in Person	5,048	4,821	5,024	5,294	6,844	7,507	9,357
Conducted by Telephone	597	91	44	57	25	21	21
Total	5,645	4,912	5,068	5,351	6,869	7,528	9,378
Percentage Done by Telephone	11.0%	2.0%	1.0%	1.0%	0.4%	0.3%	0.2%

Notes: FY 2004 data was not included in this analysis because telephone qualification inspections were not distinguished from onsite qualification inspections in N-Spect. Separate coding for telephone qualification inspections began in FY 2005.

In FY 2006, we found two qualification inspections that could not be categorized. We did not include them in our analysis.

Source: ATF N-Spect data.

Although ATF significantly decreased the number of telephone qualification inspections, ATF did not always perform the required in-person compliance inspection within 12 months of the telephone qualification inspection, as required by its operating plans. Table 3 shows that while ATF performed the majority of the telephone follow-up inspections, it consistently had at least three unperformed inspections in each fiscal year that did not receive the required in-person follow-up compliance inspections within 12 months.

Table 3: Frequency of Follow-up Compliance Inspections in Response to Telephone Qualification Inspections, FY 2005 through FY 2010

	2005 ^a	2006 ^a	2007	2008	2009	2010
Telephone Qualification Inspections	597	91	44	57	25	21
Telephone Qualification Inspections Requiring a Follow-up Compliance Inspection ^b	140	57	41	50	25	18
Required Follow-up Compliance Inspections Not Conducted Within 12 Months	62	5	4	13	4	3
Percentage	44%	9%	20%	26%	16%	17%

Notes: No requirement existed in FY 2004 to conduct a follow-up compliance inspection following a telephone qualification inspection. Telephone qualification inspections performed in FY 2011 were also excluded from this analysis because corresponding compliance inspections were to be completed in the next fiscal year.

^a Due to the large number of telephone qualification inspections in FY 2005 and FY 2006, the OIG requested a 20-percent sample of records for our review.

^b Some telephone qualification inspections did not need a follow-up compliance inspection because the application was withdrawn or abandoned.

Source: ATF.

We also found that although ATF collects data regarding telephone compliance inspections, it does not use the data to track whether an in-person compliance inspection is conducted within 12 months after the telephone qualification inspection. We asked ATF officials to provide the data, and they told us that locating this data involved searching thousands of lines of code and matching the inspections manually. Due to changes in license numbers, business names, and compliance inspections not coded to identify them as being done in response to a telephone qualification inspection in N-Spect, no automated query could be performed to retrieve the information.³²

Because qualification inspections are used to verify that applicants are eligible for a license and assist in deterring applicants that might pose a risk to public safety if they possessed a license, we believe that ATF must ensure that it completes 100 percent of the required follow-up inspections and that it should carefully track whether follow-up inspections are being performed.

³² ATF performed this query for us manually, which formed the basis for the information reported in Table 3, above.

ATF headquarters identifies and prioritizes high-risk FFLs for compliance inspections.

In 2004, the OIG found ATF to be ineffective in identifying high-risk FFLs and reported that ATF did not identify and inspect all FFLs that exhibited indicators of gun trafficking or potential violations. In response to the OIG report, ATF began focusing on high-risk FFLs for inspection. ATF headquarters created a field division discretionary initiative to target high-risk FFLs. ATF determines whether to classify an FFL as “high risk” based on a series of risk indicators such as a high number of guns used in crimes being traced back to the licensee, numerous multiple sales by an FFL to a single individual, thefts or losses of firearms, NICS denial ratio, location in a high-crime or border area, and tips from state or local law enforcement.³³ For example, in ATF’s FY 2009 Operating Plan, ATF considered pawnbrokers located in a high-crime area to be high-risk FFLs.

Each fiscal year, ATF’s Field Operations operating plan lays out headquarters-mandated priorities and field divisions’ discretionary initiatives.³⁴ The operating plan initiatives change annually based on priorities and on intelligence analyzed throughout the year. Field divisions are directed to address mandated priorities before addressing discretionary initiatives.³⁵ For example, in the FY 2012 operating plan, the inspection of 100 percent of FFL manufacturers and importers every 5 years was a headquarters-mandated priority for firearms compliance inspections, and field divisions were directed to address this priority over discretionary initiatives.

Field divisions may also receive a special request from ATF’s National Tracing Center, the Federal Firearms Licensing Center, or an ATF special agent to inspect an FFL based on intelligence information. These special requests are conducted on a discretionary basis in field divisions. Special requests can be submitted for a variety of reasons, such as to identify an FFL that sold a firearm to an individual who used

³³ The list of risk indicators are listed in ATF’s annual operating plans.

³⁴ The ATF Field Operations operating plan is sent to all field divisions at the beginning of each fiscal year. It is developed by a board incorporating DIOs from various field divisions as well as ATF headquarters personnel.

³⁵ ATF’s annual operating plans require that headquarters-mandated priorities be completed before the end of each fiscal year. Discretionary initiatives can be addressed when resources are available.

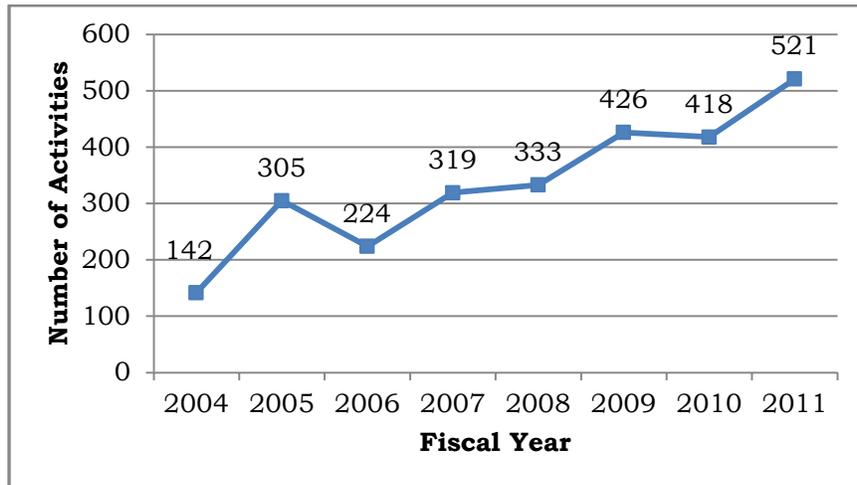
it to commit a crime or to verify that an FFL still does business at a certain address.³⁶

ATF has increased its outreach to the firearms industry.

Since 2004, we found that ATF has increased its outreach to the firearms industry, established goals for field divisions related to gun show outreach, and improved its education efforts. According to ATF, outreach efforts provide the opportunity to educate FFLs about the laws enforced by the FFL Inspection Program, which can, in turn, improve compliance. Additionally, outreach and education can aid in preventing and detecting the diversion of firearms. Outreach activities include training sessions for FFL employees, presentations at firearms industry conferences and events, and staffing information booths at gun shows. ATF also considers reviewing federal firearms laws and regulations with FFL employees during qualification and compliance inspections to be a part of its outreach efforts. In addition, ATF produces educational materials and other resources for the firearms industry. The efficacy of these outreach efforts was beyond the scope of the OIG’s review.

As seen in Figure 2, the number of firearms outreach activities has more than tripled (142 to 521) from FY 2004 through FY 2011.

Figure 2: Number of ATF Outreach Activities, FY 2004 through FY 2011



Source: ATF N-Spect data.

³⁶ Requests also occur when the Federal Firearms Licensing Center or National Tracing Center needs to verify a background check or a change of address for an FFL.

In FY 2010, ATF began setting goals for outreach activities in the annual operating plan and tracking these activities in N-Spect. The FY 2010 goals called for each field division to attend a minimum of three gun shows and complete five or more other types of outreach activities. In FY 2011, ATF increased the minimum requirement from three to six gun shows. Table 4 shows that 18 of the 25 field divisions (72 percent) met the FY 2011 goal of attending at least 6 gun shows in FY 2011.

Table 4: Field Division Gun Show Outreach Activities, FY 2011

Field Division	Number of Gun Shows
Met Gun Show Outreach Requirement	
Tampa	20
Atlanta	12
Phoenix	12
Miami	11
Nashville	11
Dallas	10
Philadelphia	9
San Francisco	8
Chicago	7
St. Paul	7
Los Angeles	7
Baltimore	6
Washington	6
Columbus	6
Louisville	6
New Orleans	6
Kansas City	6
Houston	6
Did Not Reach Gun Show Outreach Requirement	
New York	5
Detroit	5
Seattle	5
Denver	5
Boston	3
Charlotte	2
Newark	0
Totals	181

Source: ATF N-Spect data.

Conclusion

Since the OIG's 2004 report, ATF made significant changes to its FFL Inspection Program. ATF revised the standards and procedures for qualification and compliance inspections, and added the requirement of pre-inspection intelligence collection. In addition, ATF added a

requirement to conduct in-person qualification inspections absent unusual circumstances documented and reported to the Deputy Assistant Director, and the number of telephone qualification inspections decreased dramatically. While ATF performed the majority of the in-person follow-up compliance inspections for FFLs that received a telephone qualification inspection, it failed to perform a few follow-up inspections in each fiscal year of the review period and did not track whether the follow-up inspections were performed. ATF also began prioritizing high-risk FFLs for inspection and increased outreach and education efforts to FFLs and the firearms industry.

Because qualification inspections are used to verify that applicants are eligible for a license and assist in deterring applicants that might pose a risk to public safety if they possessed a license, we recommend that ATF:

1. Track whether an in-person follow-up compliance inspection is conducted within 12 months of a telephone qualification inspection.

ATF has not met its operational goals of inspecting all FFLs on a cyclical basis and tracking whether high-risk FFL inspections met annual operating plan priorities.

ATF did not meet its goal of inspecting all FFLs on a cyclical basis, resulting in over 58 percent of FFLs not being inspected for 5 years.

We found that between FY 2007 and FY 2012, over 58 percent of FFLs (73,204 out of 125,481) had not been inspected for 5 years.

During this same time, the number of FFLs increased by 16 percent (from 106,214 in FY 2004 to 123,587 in FY 2011) and ATF increased the number of investigators by 22 percent (from 510 in 2004 to 624 in 2011). Despite this increase, ATF field divisions told ATF headquarters in 2012 that they were still understaffed by 45 percent and that they needed 504 more investigators to conduct all inspections due that year.³⁷ (See Appendix III for ATF's staffing estimates for all inspection activities and shortages by field division for FY 2012.)

³⁷ The OIG did not independently verify this claim.

In our 2004 report, we noted that the Inspection Program was understaffed. Based on the analysis we did in this current review, we conclude that this is still the case. In FY 2010, ATF had 940,500 available investigator hours to complete all types of inspections, but based on our analysis of ATF data indicating how long it took (on average) for investigators to complete inspections, ATF would have needed 1,140,139 investigator hours to complete 5-year cyclical compliance inspections alone, a shortfall of 199,639 hours.³⁸

ATF's shortfall in inspection staffing is partly attributable to the large geographic areas some field divisions cover (see the text box for an example) and the rising number of FFLs nationwide. Additionally, as noted above, since 2004, the number of FFLs has increased by 16 percent (from 106,214 in FY 2004 to 123,587 in FY 2011). While ATF increased the number of investigators by 22 percent during the same period, we still found that there were insufficient investigator resources to meet the goal of conducting cyclical compliance inspections of all FFLs. Even in field divisions where ATF had enough investigator hours available to complete cyclical

Example: Kansas City

The Kansas City Field Division has both a large number of FFLs and a large geographic area to cover. A compliance inspection there took an average of 28 investigator hours to perform. To complete all 1,981 inspections due in FY 2010, the division would have needed 55,468 investigator hours. Even assuming every investigator in the division worked the entire year, and worked solely on cyclical FFL compliance inspections (and did none of the statutorily required qualification and compliance inspections of Federal Explosives Licensees), the division would have had, at most, only 54,000 investigator hours available to it, leaving a shortfall of almost 1,500 hours.

In addition, the Kansas City Field Division is responsible for covering four states and more than 283,000 square miles, making travel time a drain on inspection hours. Investigators from the division's Kansas area office, for example, sometimes traveled over 6 hours to inspect FFLs on the other side of the state. The Area Supervisor there told us that, to limit travel time, investigators are assembled in teams so that multiple FFL inspections can be scheduled in the most distant part of the state.

³⁸ ATF estimates that a federal employee has approximately 1,477 hours a year to devote to operational activities (after time for leave and training is subtracted). In our analysis, we rounded ATF's estimate to 1,500 available hours for each investigator to calculate hours needed nationally for inspections. We note that this average results in a shortfall equivalent to 133 investigators to perform all cyclical 5-year compliance inspections. We also note a wide variance among ATF field divisions in the hours taken to perform compliance inspections – from 28 hours in the Kansas City field division to 90 hours in the Baltimore field division. We did not have data sufficient to evaluate the reasons for those variances. See Appendix IV for the number of investigators and FFLs in each of ATF's 25 field divisions, the investigator hours needed, and the available investigator hours.

inspections, the law and ATF operating plans prioritize other types of inspections over cyclical inspections:

- Explosives Licensees – The *Safe Explosives Act* requires that ATF complete qualification inspections for Federal Explosives Licensee applicants within 90 days of receipt of the applications and conduct compliance inspections on explosives licensees every 3 years.³⁹ No similar statutory requirement exists for the inspection of FFLs. As a result, ATF’s operating plans consistently prioritize FEL inspections over FFL compliance inspections.
- FFL Qualification Inspections – ATF’s annual operating plans require that field divisions conduct qualification inspections in person for all new FFL applicants in the year the applications are received. In its operating plans for FY 2004 through FY 2011, ATF prioritized FFL qualification inspections over FFL compliance inspections for the field divisions. While they were successful in dramatically decreasing the number of telephone qualification inspections, this resulted in fewer available investigator hours for cyclical compliance inspections.
- High-Risk FFL Compliance Inspections – In response to a recommendation by the OIG in 2004, ATF established a high-risk FFL compliance inspection category to focus resources on FFLs that pose the most threat of being used by gun-traffickers in violating gun laws. ATF’s annual operating plans require field divisions to conduct these high-risk FFL inspections, and consequently the high-risk inspections take priority over cyclical FFL compliance inspections.

ATF did not track whether high-risk FFL inspections met annual operating plan priorities.

In 2004, the OIG recommended that ATF prepare quarterly reports on the productivity and results achieved by each field division. In our current review, we found that while ATF was tracking the number of hours worked on each inspection, it was not tracking which inspections met annual operating plan priorities, such as discretionary inspections of high-risk FFLs.

ATF personnel told us that there was no general code or field that could be queried in the N-Spect database to determine which inspections were done under a discretionary initiative. Additionally, DIOs told us

³⁹ The *Safe Explosives Act of 2002*, 18 U.S.C. § 843(b)(4)(A).

that N-Spect's project codes were not a reliable way of identifying high-risk FFL inspections because field divisions appeared to assign different meanings to different codes. This was confirmed through a questionnaire we distributed to the DIOs. Thirteen of the 20 who responded (65 percent) stated that project codes identifying recall and other types of inspections were considered high risk, while 4 DIOs stated that those same codes were not always associated with high-risk FFLs.⁴⁰ Because it has not assigned inspection codes that correspond to FFLs identified as high risk, ATF headquarters does not have an efficient way to determine which inspections are opened to meet the high-risk FFL inspection discretionary initiative or whether its annual operating plan goals are being met.

Conclusion

We conclude that ATF did not meet its operational goals. ATF is unable to conduct FFL compliance inspections on a cyclical basis, resulting in some FFLs going 5 or more years without an inspection. Inadequate Industry Operations staffing, the substantial number of FFLs to be inspected, the large geographic areas to be covered by some field divisions, and the investigator resources spent on competing priorities all appear to have contributed to ATF's inability to conduct compliance inspections on a cyclical basis. ATF's inability to conduct cyclical compliance inspections is not a new problem – the OIG found this to be true in its 2004 review. We understand the limitations that ATF has in meeting its goal to inspect FFLs on a 3- or 5-year basis. However, we believe that ATF needs to reconsider how to meet its cyclical compliance goals since the problems identified in 2004 still exist. Allowing non-compliant FFLs to go uninspected by ATF could present a public safety issue.

Finally, ATF cannot easily determine which inspections are opened to meet its high-risk FFLs inspection discretionary initiative because its case management system does not have a general code that can be queried electronically to determine all of those inspected under an initiative.

⁴⁰ There are 25 field divisions in ATF and 23 DIOs. Two DIOs oversee two field divisions each. Twenty DIOs responded to the questionnaire.

To ensure that non-compliant FFLs do not go undetected by ATF for long periods of time, we recommend that ATF:

2. Reconsider how to meet its goal of performing FFL cyclical compliance inspections on a 3- and 5-year basis, respectively.

To ensure that ATF can adequately track when high-risk FFL inspections are opened to meet operating plan priorities, we recommend that ATF:

3. Develop and implement a uniform coding system that shows when a high-risk FFL inspection was performed.

ATF's administrative action policy was revised to provide more flexible and consistent guidance, and ATF instituted a review process to ensure that revocation criteria were consistently applied across field divisions.

In May 2003, ATF issued a policy requiring all field divisions to adhere to a unified set of criteria for determining when to revoke or deny renewal of a license.⁴¹ In 2004, the OIG found that despite that policy, revocations were conducted in an inconsistent and untimely manner. In FY 2007 and FY 2009, ATF revised the policy to help field division personnel make consistent and appropriate determinations on whether to revoke a license or take some other action when an FFL was found to have violated federal firearms laws.⁴² ATF also provided field divisions with more flexibility by allowing DIOs to apply alternative administrative actions instead of revoking licenses when appropriate. In FY 2008, ATF headquarters also began reviewing FFL revocations to ensure that revocation criteria were consistently applied across field divisions.

ATF standardized its administrative action policies and provided field divisions with more flexibility in dealing with non-compliance.

Based on the changes made to the administrative action policies since FY 2003, alternatives to revocation now include one of, or a combination of, the following:

- a warning conference with the DIO,
- a warning letter,

⁴¹ ATF Brief 5370.1 (May 8, 2003).

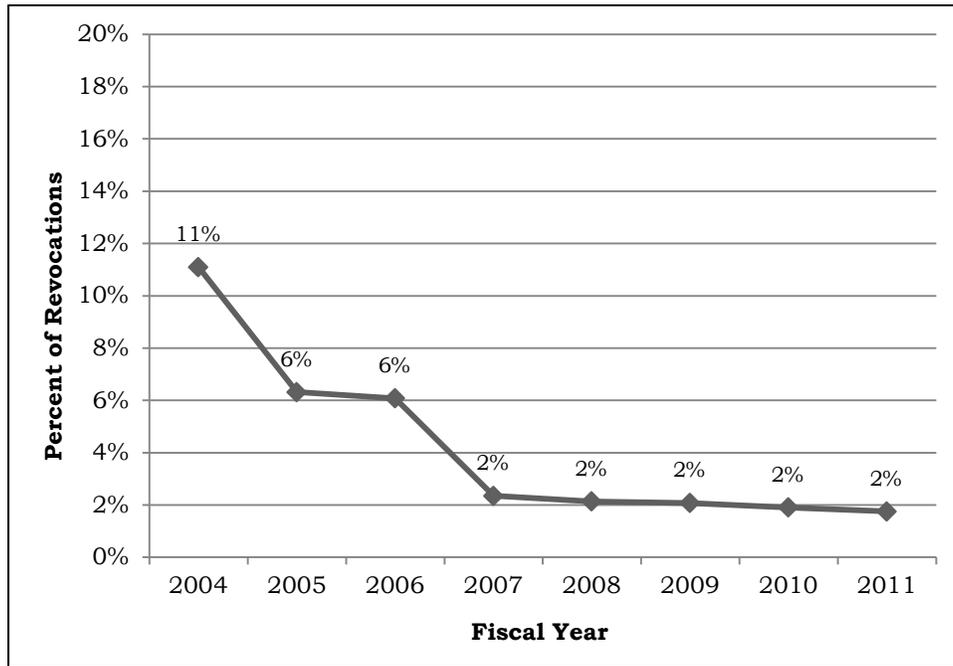
⁴² ATF's review process uses the term "revocation" to refer to both revocations and denials of license renewal.

-
- a negotiated agreement with the FFL that might include a corrective action plan,
 - re-inspection,
 - suspension,
 - fine, or
 - voluntary surrender of license in lieu of revocation.

Since 2004, the administrative action policy has included a table of violations that establishes criteria for when violations merit revocation or an alternative to revocation. The standards for administrative actions listed in the table of violations became more comprehensive in later versions. For example, in 2007, ATF added standards for warning letters and, in 2009, ATF gave DIOs additional discretion in recommending alternatives to revocation. The DIO of a field division can recommend alternatives to revocation in consultation with the Division Counsel, as well as the Deputy Assistant Director for Industry Operations, the Assistant Director of the Office of Field Operations, and the Deputy Chief Counsel at ATF headquarters. These alternatives allow FFLs the opportunity to become compliant or, when needed, allow ATF to establish “willfulness” by recording past instances of similar violations, thus establishing grounds to revoke the licenses of repeat offenders.

We found that ATF revoked 71 licenses in FY 2011 compared with 125 in FY 2004, a 43-percent decrease in revocations. At the same time, the number of alternative actions increased: warning conferences by 80 percent, warning letters by 1,121 percent, and reports of violations by 276 percent. (See Figure 3 for the actual numbers of actions in each fiscal year.)

Figure 3: Percentage of Administrative Actions that Were Revocations, FY 2004 through FY 2011



Administrative Actions	2004	2005	2006	2007	2008	2009	2010	2011
Revocation/Denial of Renewal	125	118	148	93	84	67	70	71
Total Administrative Actions	1,127	1,868	2,434	3,959	3,936	3,226	3,669	4,056

Source: ATF N-Spect data.

Most ATF officials we interviewed at headquarters and in the field divisions viewed the administrative action process favorably. Several DIOs stated that the flexibility of the current policy allowed ATF to educate FFLs and work with them to bring them into compliance by applying successive levels of administrative actions in response to violations. One Area Supervisor stated that a warning conference served as a “wake up call” for most FFLs, while another said that the administrative action process and policy allowed Industry Operations investigators to “apply their expertise and assist the FFL in correcting issues.” A DIO stated that FFLs became more educated by going through the administrative action process and became more compliant as a result.

In the course of our review, we observed a recall inspection of an FFL that had previously been cited with violations and had been required

to attend a warning conference with ATF a year and a half earlier. The FFL told the OIG that he never wanted another warning letter and did not want to have to come back to the ATF field division office for another warning conference. He stated that the warning conference had made him realize that he needed to try hard to minimize mistakes and adhere to all laws.

At the conclusion of each fiscal year, ATF headquarters reviews FFL license revocations for consistent application of revocation criteria across field divisions.

Beginning in August 2009, ATF assigned a working group, called the Revocation Validation and Assertion Team, to review revocations that had been completed during the prior fiscal year and evaluate whether revocation criteria had been applied consistently across field divisions.

The Revocation Validation and Assertion Team used six criteria based on ATF Order 5370.1A to determine if there is a public safety nexus for revocations: (1) missing firearms, (2) no NICS forms or Form 4473s, (3) transfers to prohibited persons, (4) selling to straw purchasers, (5) false entries or records, and (6) failure to use an A&D Book. The criteria measured the “intensity” of the public safety nexus using four categories: unsubstantiated, minimal, moderate, and substantial. At the low end of the scale, the unsubstantiated category consisted of cases with no public safety nexus, such as an FFL failing to meet local zoning requirements. At the opposite end of the scale, the substantial category consisted of cases with a high public safety nexus. An example of a case with a high public safety nexus would be one where a license was revoked because the FFL was missing NICS forms, Form 4473s, or firearms. Once the nexus was determined, the team would make a second qualitative judgment as to whether the revocation was the correct decision or an alternative to revocation was warranted.

We reviewed 10 revocation files, randomly chosen from FY 2010 and FY 2011, to evaluate whether the ATF Revocation Validation and Assertion Team consistently used the six revocation criteria listed above. Based on our review of those 10 files, including the associated Industry Operations inspection narratives, hearing officer reports, and court documents, we found that the ATF Revocation Validation and Assertion Team appeared to use consistent criteria in those cases to evaluate whether the utilization of revocations was correct. Although we looked to see if the criteria listed as being used were consistent across revocation decisions, it was beyond the scope of this review to analyze the merits of each case file and to determine if the process was consistently applied.

From FY 2008 through FY 2011, the ATF Revocation Validation and Assertion Team reviewed revocation criteria for 252 closed cases and concluded that in 7 cases (less than 3 percent) an alternative other than revocation should have been utilized. The Revocation Validation Assertion Team did not assess whether ATF had followed established procedures in these cases. In fact, over the course of our review, we noted that in some cases, the revocation process may not have been followed consistently. The OIG intends to examine the revocation process in more detail in a future review.

Conclusion

ATF's revisions in FY 2003, FY 2007, and FY 2009 to its administrative action policy provided Industry Operations staff more detailed guidance in determining administrative actions. These revisions also provided ATF staff the flexibility to work with non-compliant FFLs rather than revoking their licenses. Additionally, ATF implemented a review process to assess whether revocation criteria were applied consistently across field divisions.

ATF's administrative actions process is significantly prolonged after submission for Division Counsel review.

In 2004, the OIG found that the revocation process for non-compliant FFLs was lengthy and involved numerous ATF officials. The OIG recommended that ATF develop an administrative action tracking system to monitor the progress and timeliness of FFL denials and revocations. ATF resolved the recommendation in 2005. Our current review examined the data ATF provided from this tracking system and also found that the administrative action process for non-compliant FFLs is prolonged when a revocation or denial of a license renewal is involved.

ATF's processing time for revocations of non-compliant FFL remains lengthy.

In 2004, the OIG recommended that ATF direct its licensing center to develop a tracking system to monitor the progress and timeliness of FFL denials and revocations. As a result, in FY 2005, ATF began tracking the steps in the administrative action process in a spreadsheet. The longest cases were the revocation cases that were appealed in federal court, and we understand that the length of time to process these cases was not entirely within ATF's control.

We reviewed ATF's tracking spreadsheet and N-Spect data on revocations, focusing on firearms dealers and pawnbrokers from FY 2005

through FY 2010. Firearms dealers and pawnbrokers sell firearms to the public and make up the majority of the high-risk inspections. We found that of the 453 licenses revoked from FY 2005 through FY 2010, 149 (33 percent) of the cases took longer than 1 year from the DIO's initial recommendation to the final revocation notice. Of those 149 cases, 41 took longer than 2 years, including 6 that took longer than 3 years. In nearly all these cases, the FFLs were able to continue doing business until the date the license revocation became effective.⁴³

Directors of Industry Operations were generally reviewing recommendations for revocations in a timely manner.

According to ATF's 2009 administrative action policy, cases involving revocation should be finalized within 120 days from the beginning of the DIO's review until issuance of a notice of revocation, including the Division Counsel's review.⁴⁴ In addition, the policy states that "Division Counsel should have a minimum of 60 days to complete their review and prepare the Notice of Revocation." The policy also states that the Division Counsel's review of recommendations for revocation is included in this 120-day timeframe, but the responsibility to meet the 120-day time standard is the DIO's.

ATF's administrative action tracking data showed that the DIOs were generally reviewing recommendations for revocations in a timely manner. We found that about 73 percent (696 of 961) of the cases were reviewed within 30 days by the DIO and that 16 percent (151 of 961) of the cases took over 60 days for the DIO review (see Table 5). In the majority of cases, Division Counsel had at least 90 days out of the 120-day time standard to complete their review.

⁴³ Some revocations did not go into effect until several weeks or months after the final notice of revocation because the FFLs received extra time from ATF or the courts to liquidate or transfer their firearms inventory.

⁴⁴ ATF Order 5370.1A (October 30, 2009), 7.

**Table 5: Median Number of Days for DIO Review,
FY 2005 through FY 2010**

Days to Review Recommended Administrative Action	Cases	Percentage
1 to 15 days	546	57%
16 to 30 days	150	16%
31 to 45 days	78	8%
46 to 60 days	36	4%
Over 60 days	151	16%
Total	961	101%

Notes: The table does not include data from FY 2004 because ATF did not start tracking final administrative action information until FY 2005. The number of cases includes only those cases that had complete data in the tracking spreadsheet. Percentages do not add to 100 due to rounding.

Source: ATF administrative action tracking data.

ATF did not ensure that administrative actions were not unduly prolonged after cases moved to Division Counsels for review.

In 2004, the OIG reported that, according to ATF officials, revocation proceedings were lengthy due to delayed support from ATF attorneys. Assistant Chief Counsels and Division Counsels acknowledged delays in denial and revocation proceedings.⁴⁵ At that time, Division Counsels attributed the delays to their heavy workloads and the fact that the information they received from the Industry Operations investigators did not always show that an FFL knowingly and willfully violated federal firearms laws. In addition, the OIG found in 2004 that a shortage of counsel staff in field divisions contributed to delays in the revocation process.

In the course of this review, we also found delays in the revocation process after the revocation was sent to the Division Counsels for review. While the Office of Chief Counsel told us that the vast majority of Division Counsel reviews were completed in every region in less than 60 days, we found to the contrary – only 37 percent of cases were completed in less than 60 days, and across all field divisions the Division Counsels took a median of 80 days to review recommendations for revocations. Of the 637 cases we reviewed, 403 cases (63 percent) required more than 60 days for Division Counsel review, including 202 cases (32 percent)

⁴⁵ OIG, *Inspections of Firearms Dealers*, 41.

that required more than 120 days.⁴⁶ Table 6 shows the time cases were under Division Counsel review from FY 2005 through FY 2010.

Table 6: Number of Days Revocations Were under Division Counsel Review by Ranges, FY 2005 through FY 2010

Days to Review Recommendations for Revocation	Cases	Percentage
1 to 30 days	103	16%
31 to 60 days	131	21%
61 to 90 days	117	18%
91 to 120 days	84	13%
Over 120 days	202	32%
Total	637	100%

Notes: The table does not include data from FY 2004 because ATF did not start tracking final administrative action information until FY 2005. The number of cases includes only those cases that had complete data in the tracking spreadsheet. Percentages are rounded.

Source: ATF administrative action tracking data.

We further found that only the Midwest Region (comprising the Chicago, Columbus, Louisville, Detroit, and St. Paul field divisions) had a formal policy with a time standard for counsel review – 60 days.⁴⁷ However, even with the policy, review by Division Counsel in the Midwest Region took anywhere from 5 days to 835 days, and still had a median length of 80 days, which was greater than the median review time for three other regions. The other regions' median review time ranged from 58 days to 137 days.

The Deputy Chief Counsel stated that the Chief Counsel's office had received feedback on some Division Counsels taking a long time to conduct initial reviews of recommendations for administrative action. He stated that he spoke with some Division Counsels, who told him that they did not always have the cases for the entire time indicated in the administrative action tracking spreadsheet. However, he said some revocations are not pursued when a law enforcement action is initiated against the licensee during Division Counsel review and other occasions when a Counsel will return the file to the Industry Operations staff and request additional information before rendering an opinion. He said that while the latter situations are not captured in the Industry Operations tracking system, they are tracked by his office separately, and the time

⁴⁶ The number of cases includes only those cases that had complete data in ATF's tracking spreadsheet.

⁴⁷ ATF Order 5370.1A (October 30, 2009), 7.

awaiting a response is more appropriately attributed to Industry Operations than to Counsel. The OIG could not verify this information because of limitations in the tracking system data provided by ATF.

Also, according to the Deputy Chief Counsel at ATF headquarters, each field division should have one Division Counsel and one staff counsel. He said that only 10 of the 25 field divisions had 2 attorneys and that ATF did not have the budget to apply the staffing structure to all field divisions. Division Counsels we interviewed during our site visits also cited understaffing as a challenge to their role in the FFL Inspection Program.

Conclusion

ATF's revocation process remains lengthy. While the processing time for cases appealed to federal court is not entirely within ATF's control, we found that Division Counsel review of revocation cases sometimes prolonged the process. We recognize that the length of time Division Counsel takes to review a case is affected by factors such as law enforcement actions initiated during Division Counsel review and the occasional need to request additional information, as well as the complexity of a particular case. However, because non-compliant FFLs can sell firearms during the revocation process, it is imperative that ATF process revocations with all appropriate speed. Therefore, we recommend that ATF:

4. Determine and address the reasons, exclusive of any staff shortages, for delays of revocation cases during Division Counsel review.

CONCLUSION AND RECOMMENDATIONS

We concluded that ATF has made improvements to its FFL Inspection Program. Specifically, since the OIG's 2004 report, ATF has revised the standards and procedures for qualification and compliance inspections, and required pre-inspection intelligence collection. In addition, ATF required that qualification inspections must be conducted in person unless a telephone inspection was authorized by the Deputy Assistant Director for Industry Operations, and we found that the number of qualification inspections conducted by telephone has decreased dramatically. While ATF performed the majority of the in-person follow-up compliance inspections for FFLs that received a telephone qualification inspection, it failed to perform a few follow-up inspections in each fiscal year of the review period and did not track whether the follow-up inspections were performed. ATF also began prioritizing high-risk FFLs for inspection and increased outreach and education efforts to FFLs and the firearms industry.

Despite these improvements, we identified several areas that ATF needs to address. First, ATF did not meet its goal of inspecting all FFLs on a cyclical basis. Inadequate Industry Operations staffing, high numbers of FFLs to be inspected, large geographic areas to be covered by some field divisions, and Industry Operations resources being expended on competing priorities all appear to have contributed to ATF's inability to conduct compliance inspections on a cyclical basis. In light of these issues, we believe that ATF needs to reconsider how to address the critical need to perform cyclical compliance inspections in a timely fashion. In this regard, we note that the basic problem identified by the OIG in 2004 still exists and, in fact, only 62 percent of the FFLs inspected in FY 2011 were found to be fully compliant with federal firearms laws. Statistics such as the large number of firearms that are missing, lost, or stolen from FFL inventories underline the need for prompt, effective action by ATF in this area.

Second, ATF did not track when high-risk FFL inspections met annual operating plan priorities. No fields or codes exist within the inspections case management system that can be used to easily identify which FFL inspections performed corresponded to high-risk FFLs.

We also concluded that ATF has made improvements to its administrative revocation process. ATF's revisions to its administrative action policy provided staff more detailed guidance in determining administrative actions. These revisions also provided ATF staff the flexibility to work with non-compliant FFLs rather than revoking their

licenses. Additionally, ATF implemented a review process assessing the application of revocation criteria across field divisions.

However, ATF's revocation process remains lengthy. While some of the processing time was not entirely within ATF's control, we found that Division Counsel review of revocation cases sometimes prolonged the process. We recognize that the length of time Division Counsel takes to review a case is affected by factors such as the initiation of law enforcement actions during Division Counsel review and the occasional need to request additional information, as well as the complexity of a particular case. However, because non-compliant FFLs can sell firearms during the revocation process, it is imperative that ATF process revocations with all appropriate speed.

Recommendations

Because qualification inspections are used to verify that applicants are eligible for a license and assist in deterring applicants that might pose a risk to public safety if they possessed a license, we recommend that ATF:

1. Track whether an in-person follow-up compliance inspection is conducted within 12 months of a telephone qualification inspection.

To ensure that non-compliant FFLs do not go undetected by ATF for long periods of time, we recommend that ATF:

2. Reconsider how to meet its goal of performing FFL cyclical compliance inspections on a 3- and 5-year basis, respectively.

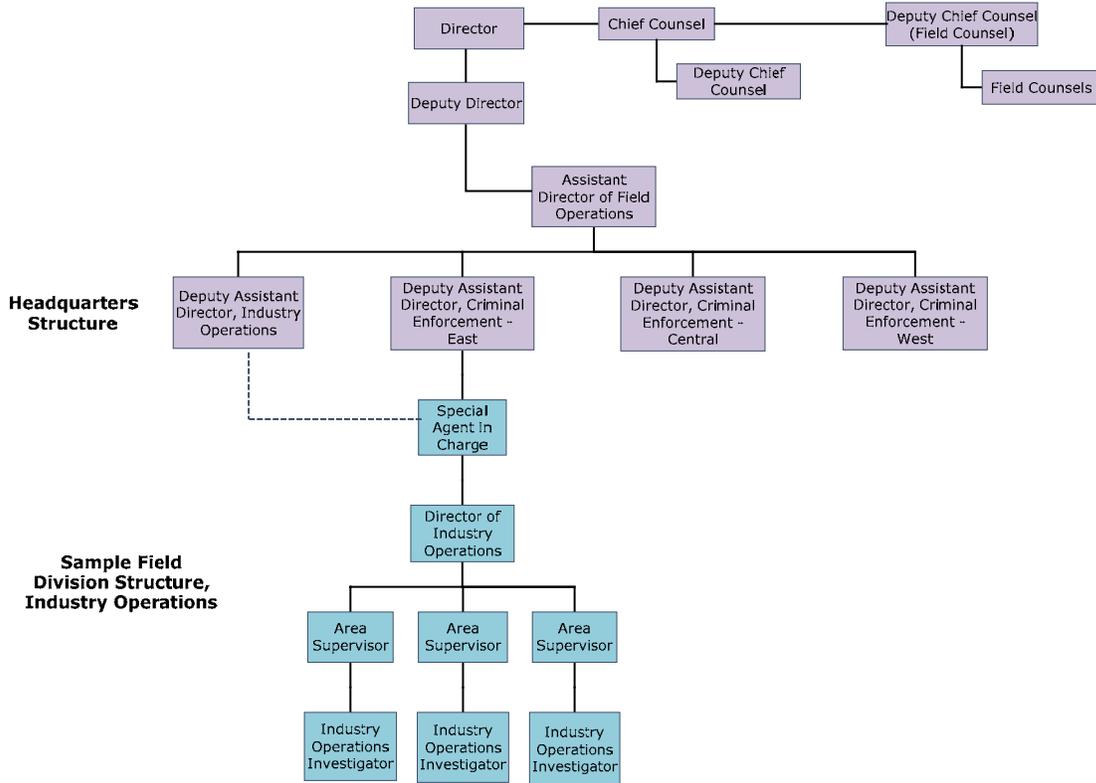
To ensure that ATF can adequately track when high-risk FFL inspections are opened to meet operating plan priorities, we recommend that ATF:

3. Develop and implement a uniform coding system that shows when a high-risk FFL inspection was performed.

Because non-compliant FFLs can sell firearms during the revocation process, it is imperative that ATF process revocations with all appropriate speed. Therefore, we recommend that ATF:

4. Determine and address the reasons, exclusive of any staff shortages, for delays of revocation cases during Division Counsel review.

APPENDIX I: FIELD OPERATIONS AND FIELD DIVISION ORGANIZATION CHART



Note: Field Counsels are referred to as Division Counsels in the report.

Source: ATF.

APPENDIX II: PRE-INSPECTION INTELLIGENCE COLLECTION STEPS

Qualification Inspections	Compliance Inspections
<ul style="list-style-type: none"> • Review any special instructions noted in the inspection assignment. • Review the application and supporting documentation. • Query the Federal Licensing System database to determine if the applicant or potential employees have or have had any other licenses or permits. • Review ATF area office files for information related to previous licenses. • Query ATF’s investigative case management system, N-Force, for any open criminal investigations. • Request information from the Field Intelligence Group. • Determine if the proposed business would violate state or local zoning ordinances. • Determine the business structure. • Query the appropriate state agency for copies of business documents, such as partnership agreements or state registration documents. 	<ul style="list-style-type: none"> • Review the inspection assignment and any special instructions. • Research the business, FFL, and responsible persons, as well as any other information relevant to the focus of the inspection. • Query databases to determine if the FFL, or those designated to operate the business, are prohibited from having a license or if there is any other information that may indicate a security risk. • Review the licensee’s history of compliance in the area office files and N-Spect. • Review firearms traced back to the FFL, multiple handgun sales made by the FFL, and firearms stolen or missing from the FFL. • Develop a list of commonly recovered crime guns and known weapons of choice in the local area. • Review the National Instant Criminal Background Check System audit log, or similar report from state agency, that contains up to 60 days of transaction information. • Query N-Force to determine if there is an open investigation on the FFL. • Share information with ATF special agents and local law enforcement agencies if necessary. • Request information from the Field Intelligence Group if appropriate. • Review the FFL’s inventory of <i>National Firearms Act</i> weapons if necessary.*

* The *National Firearms Act*, enacted in 1934, imposed a special tax on the import, manufacture, and transfer of firearms defined by the Act and required registration of all these firearms. *National Firearms Act* weapons include shotguns and rifles having barrels less than 18 inches in length, machine guns, and firearm mufflers and silencers.

**APPENDIX III: FY 2012 INDUSTRY OPERATIONS INVESTIGATOR
STAFF ESTIMATES, FOR ALL INSPECTIONS, RANKED BY SIZE OF
SHORTAGE**

Field Division	Existing Staff	Staff Needed	Shortage/ Overage of Staff	Percent Staff Shortage
Columbus	31	73	-42	-58%
Kansas City	37	78	-41	-53%
Charlotte	24	56	-32	-57%
Seattle	27	59	-32	-54%
Nashville	30	58	-28	-48%
St. Paul	25	52	-27	-52%
Boston	22	49	-27	-55%
Philadelphia	29	54	-25	-46%
Tampa	19	44	-25	-57%
Denver	22	46	-24	-52%
Dallas	49	71	-22	-31%
New Orleans	28	49	-21	-43%
Houston	43	59	-16	-27%
Louisville	23	39	-16	-41%
Chicago	16	32	-16	-50%
San Francisco	24	39	-15	-38%
Detroit	16	30	-14	-47%
Los Angeles	24	38	-14	-37%
Atlanta	24	37	-13	-35%
Phoenix	34	47	-13	-28%
Washington	22	35	-13	-37%
Baltimore	8	19	-11	-58%
New York	15	26	-11	-42%
Newark	10	14	-4	-29%
Miami	16	18	-2	-11%
Totals	618	1,122	-504	-45%

Source: ATF.

**APPENDIX IV: WORK HOURS AVAILABLE AND NEEDED FOR FFL
5-YEAR CYCLICAL COMPLIANCE INSPECTIONS IN FY 2010**

Field Division	IOIs*	IOI Hours Available	FFLs in the Field Division	Average IOI Hours Spent on a Compliance Inspection	Hours Needed for Compliance Inspections
Atlanta	25	37,500	3,233	48	31,056
Baltimore	9	13,500	2,499	90	45,000
Boston	25	37,500	7,510	35	52,570
Charlotte	26	39,000	5,437	54	58,698
Chicago	21	31,500	4,038	45	36,360
Columbus	37	55,500	6,581	36	47,376
Dallas	45	67,500	5,964	39	46,527
Denver	16	24,000	5,479	57	62,472
Detroit	18	27,000	4,045	57	46,113
Houston	40	60,000	4,443	43	38,227
Kansas City	36	54,000	9,907	28	55,468
Los Angeles	26	39,000	3,424	55	37,675
Louisville	26	39,000	3,358	54	36,288
Miami	16	24,000	1,453	50	14,550
Nashville	31	46,500	4,954	68	67,388
New Orleans	26	39,000	4,919	50	49,200
New York	19	28,500	3,689	35	25,830
Newark	9	13,500	478	38	3,648
Philadelphia	31	46,500	5,427	39	42,315
Phoenix	30	45,000	3,648	36	26,280
San Francisco	20	30,000	4,778	54	51,624
Seattle	29	43,500	7,153	84	120,204
St. Paul	27	40,500	6,634	40	53,080
Tampa	16	24,000	4,486	50	44,850
Washington	23	34,500	3,944	60	47,340
Totals	627	940,500	117,481	-	1,140,139

Notes: Staff numbers are for the end of FY 2010. The cyclical inspections are computed on a 5-year basis.

* Industry Operations investigators are referred to as IOIs in ATF.

Source: OIG calculations on ATF N-Spect data.

APPENDIX V: ATF RESPONSE TO DRAFT REPORT



APR 10 2013

U.S. Department of Justice

Bureau of Alcohol, Tobacco,
Firearms and Explosives

Office of the Director

Washington, DC 20226

MEMORANDUM TO: Inspector General

FROM: Acting Director

SUBJECT: The Bureau of Alcohol, Tobacco, Firearms and Explosives
(ATF) Response to the Office of the Inspector General's Draft
Report on the Review of ATF's Federal Firearms Licensee (FFL)
Inspection Program, Assignment Number A-2010-004

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: Track whether an in-person follow-up compliance inspection is conducted within 12 months of a telephone qualification inspection.

ATF's Response: ATF concurs with this recommendation. ATF will implement business process changes and develop N-Spect modifications to monitor the timeliness of in-person follow-up inspections. However, while ATF concurs in the recommendation, we believe that less reliance should be placed on telephone qualification inspections. Their value is marginal and, consequently, they are rarely employed; their use is usually limited to those circumstances where the applicant is located in a remote geographic area where ATF inspection resources are scarce. In those rare cases where a qualification inspection was conducted by telephone, we recognize that an in-person compliance inspection within 12 months results in a greater understanding of FFL requirements and a higher level of overall compliance. Consequently, we will prioritize and track such inspections consistent with available resources.

Recommendation #2: Reconsider how to meet its goal of performing FFL cyclical Compliance inspections on a 3- and 5-year basis, respectively.

ATF's Response: ATF concurs in part with this recommendation. ATF has already explored available options to assist with meeting its cyclical inspections goals and will continue to seek out innovative methods to meet those goals. As the OIG report emphasized, though, the primary impediment to ATF meeting cyclical inspection results from chronic resource constraints outside of ATF's control. As the report notes: "In our 2004 report, we noted that the inspection program

Inspector General

was understaffed. Based on the analysis we did in this current review, we conclude that this is still the case.” Shifting existing resources to meet cyclical inspection goals is not a viable option. As the OIG report recognizes, several factors constrain ATF’s ability to reprioritize resources to cyclical inspections. First, the law mandates that ATF conduct regular inspections of Federal Explosives licensees; these inspections must take priority over cyclical FFL compliance inspections. Second, in order to comply with the recommendations of OIG’s 2004 report, ATF has prioritized inspection of high-risk FFLs above cyclical inspection goals. Third, in response to recommendations found in OIG’s 2004 report, ATF prioritizes in-person qualification inspections above cyclical compliance inspections. Fourth, prioritization of qualification inspections is necessitated by the legal requirement that ATF must approve or deny the application of a firearms licensee within 60 days of its receipt. 18 U.S.C. § 923(d)(2). Finally, ATF must balance its commitments to these competing priorities in an environment in which the population of FFLs continues to increase.

Recommendation #3: Develop and implement a uniform coding system that shows when a high-risk FFL inspection was performed.

ATF’s Response: ATF concurs with this recommendation. Consistent with available resources, ATF will implement business process changes and develop N-Spect modifications to track all inspections of high-risk FFLs. As the OIG report points out, ATF’s annual operating plan lays out both headquarters-mandated priorities and field division discretionary initiatives for the coming year. High-risk, headquarters-mandated inspections are identified in the operating plan and tracked in N-Spect; discretionary field-division initiatives that also focus on high-risk licensees are not necessarily identified in the annual operating plan and therefore may not be tracked as high-risk inspections in N-Spect. ATF acknowledges that its case management system should be augmented and will make the necessary changes to N-Spect to track all high-risk FFL inspections.

Recommendation #4: Determine and address the reasons, exclusive of any staff shortages, for delays of revocation cases during Division Counsel review.

ATF’s Response: ATF concurs with this recommendation. ATF is already taking steps to address reasons for any delays in the revocation review process.

Since the conclusion of the OIG audit period 2 ½ years ago, ATF Counsel has created and implemented its own case management system which permits attorney supervisors to more effectively manage the revocation review process. Counsel supervisors in the field are able to quickly access this information and take corrective actions when necessary.

ATF continues to have reservations about the Inspector General’s inclusion of the data in Table 6 of the draft report and the accompanying analysis and conclusion. The data in Table 6 was gleaned from the Administrative Action Tracking (AAT) chart, which is not a Counsel created or

Inspector General

controlled case tracking system. Most important, the data does not reflect the time a revocation matter is under review by Counsel. The AAT chart only indicates when the matter is initially sent to Counsel and the date on which Counsel has completed its preparation of the Notice of Revocation. It does not account for events in the intervening period when a matter is not under review by Counsel.

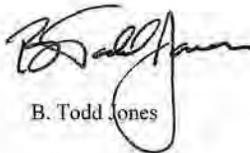
A recent examination of Counsel review-time in FY 2013 reflects that in nearly two-thirds of the cases, Counsel review has been completed within 60 days. See the following table which models Table 6 in the draft report:

**Number of Days Revocations were under Counsel Review by Ranges
FY 2013**

Days to Review Recommendations for Revocation	Cases	Percentage
1 to 30 days	18	43
31 to 60 days	9	21
61 to 90 days	6	14
91 to 120 days	4	10
Over 120 days	5	12
Total	42	100%

The preparation of Notices and Final Notices is also under review by Counsel with the purpose of achieving a more consistent and efficient work product. This will aid the attorneys in the field in reducing the time a revocation matter is "under review." Counsel is also instituting a system wherein managers will specifically track the time period that Division Counsel takes to prepare Notices of Revocation to ensure that, absent exceptional circumstances, all Notices are prepared within the time frames set forth in the ATF Administrative Action Policy. Finally, the recent reorganization of the field counsel structure to mirror ATF's field operations, and the appointment of supervisory deputies in each region will serve to enhance communication as to both substantive and timeliness issues associated with management of revocation review work flow.

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



B. Todd Jones

APPENDIX VI: OIG ANALYSIS OF ATF RESPONSE

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 V to this report. The OIG's analysis of ATF's response and the actions necessary to close the recommendations are discussed below.

Recommendation 1: Track whether an in-person follow-up compliance inspection is conducted within 12 months of a telephone qualification inspection.

Status: Resolved.

ATF Response: ATF concurred with this recommendation and stated that it will implement business process changes and develop N-Spect modifications to monitor the timeliness of in-person follow-up inspections. ATF also stated that it will prioritize and track such inspections consistent with available resources.

OIG Analysis: ATF's planned actions are responsive to our recommendation. Please provide documentation by July 31, 2013, of the progress made on implementing the business process changes and N-Spect modifications. Additionally, we request that ATF provide documentation for any telephone qualification inspections conducted in the year following implementation.

Recommendation 2: Reconsider how to meet its goal of performing FFL cyclical compliance inspections on a 3- and 5-year basis, respectively.

Status: Resolved.

ATF Response: ATF partially concurred with this recommendation and stated that it has already explored available options to assist with meeting its cyclical inspections goals and that it will continue to seek innovative methods to meet those goals. ATF also stated that shifting existing resources to meet cyclical inspections goals is not a viable option because ATF must balance its commitments to competing priorities, such as the legal requirements for explosives licensee inspections and firearms qualification inspections. ATF also noted that the population of FFLs continues to increase as the OIG stated in this report.

OIG Analysis: ATF's response is partially responsive to our recommendation in that ATF states it will continue to seek innovative methods to meet its cyclical compliance inspections goals. We agree that competing legal requirements also place demands on ATF's limited resources. However, we believe it is important for ATF to ensure that non-compliant FFLs do not go undetected by ATF for long periods of time. Please provide a list by July 31, 2013, of available options ATF has already explored or is exploring in seeking to meet its inspections goals.

Recommendation 3: Develop and implement a uniform coding system that shows when a high-risk FFL inspection was performed.

Status: Resolved.

ATF Response: ATF concurred with this recommendation and stated that consistent with available resources, it will implement business process changes, augment its case management system, and develop N-Spect modifications to track all inspections of high-risk FFLs.

OIG Analysis: ATF's planned actions are responsive to our recommendation. Please provide documentation by July 31, 2013, or a status on ATF's business process changes and the modifications made to N-Spect allowing ATF to track all high-risk FFL inspections.

Recommendation 4: Determine and address the reasons, exclusive of any staff shortages, for delays of revocation cases during Division Counsel review.

Status: Resolved.

ATF Response: ATF concurred with this recommendation and stated that it is already taking steps to address reasons for any delays in the revocation review process. ATF stated that Counsel has created and implemented its own case management system that permits attorney supervisors to more effectively manage the revocation review process.

ATF expressed reservations regarding our inclusion of the data in Table 6 of the report and the accompanying analysis and conclusion. ATF stated that the data in Table 6 was gleaned from the Administrative Action Tracking (AAT) system, which ATF noted is not a Counsel created or controlled case tracking system and does not reflect the time a revocation matter is under review by Counsel.⁴⁸ ATF's response included

⁴⁸ The AAT system is controlled by ATF's Enforcement Programs and Services.

a recent examination of Counsel review time in FY 2013 that it stated indicates the number of days revocations were under Division Counsel review.

According to ATF, Counsel is instituting a system wherein managers will track how long Division Counsels take to prepare Notices of Revocation to ensure that all notices are prepared within the time frames set in ATF's administrative action policy. ATF also stated that Counsel was reviewing the preparation of notices and final notices with the intention of producing a more consistent product that will expedite Division Counsel revocation reviews. Finally, ATF stated that it recently reorganized the Field Counsel structure to mirror ATF's field operations and the appointment of supervisory deputies in each region will serve to enhance communication.

OIG Analysis: We appreciate ATF's examination of Division Counsel recent review time; however, the data for FY 2013 is outside the scope of this review, which was from FY 2004 through FY 2011. As a result, we did not verify the accuracy of ATF's FY 2013 data. For our review, ATF provided information from the AAT tracking system, which it had implemented to resolve a recommendation in the OIG's 2004 review. We understand that the Counsel's new case tracking system did not begin collecting the type of data we sought in our review until October 2012. Moreover, while Table 6 shows that the overall Division Counsel review period is prolonged, we did not attribute the entire period of time to actual Division Counsel review. We acknowledged that other factors contribute to the length of the review period.

ATF stated that the FY 2013 data from the new case management system is more reflective of the Division Counsel review time since it shows only the time that Division Counsels took to review revocation cases. Nonetheless, even the FY 2013 data suggests that in 36 percent of the cases (15 of 42), actual Division Counsel review took longer than 61 days. Moreover, in 22 percent of the cases (9 of 42), Division Counsels required a minimum of 91 days for review, and 12 percent of the cases (5 of 42) required over 120 days for review. As mentioned in the report, ATF's administrative action policy states that cases involving revocation should be finalized within 120 days from the beginning of the DIO's review until issuance of a Notice of Revocation.

During the Exit Conference for this review, ATF provided the OIG a sample printout of a revocation case from the new case management system. From that sample it appears that ATF will be able to identify reasons for any delays that occur during the time a revocation is under review by Division Counsels. Based on the actions taken by ATF to

develop and implement a case management system that can address the reasons, exclusive of staff shortages, for delays of revocation cases during Division Counsel review, this recommendation is considered resolved. We request that ATF provide us with updates at 3-month intervals over the next year, starting on July 31, 2013, to document whether it has fully identified the causes of the delays in Division Counsel review and provide a status report on the results of its efforts to decrease those review times.