



June 2016

# FIREARMS DATA

## ATF Did Not Always Comply with the Appropriations Act Restriction and Should Better Adhere to Its Policies

Accessible Version

# GAO Highlights

Highlights of [GAO-16-552](#), a report to congressional requesters

## Why GAO Did This Study

ATF is responsible for enforcing certain criminal statutes related to firearms, and must balance its role in combatting the illegal use of firearms with protecting the privacy rights of law-abiding gun owners. As part of this balance, FFLs are required to maintain firearms transaction records, while ATF has the statutory authority to obtain these records under certain circumstances. ATF must also comply with an appropriations act provision that restricts the agency from using appropriated funds to consolidate or centralize FFL records.

GAO was asked to review ATF's compliance with this restriction. This report (1) identifies the ATF data systems that contain retail firearms purchaser data and (2) determines whether selected ATF data systems comply with the appropriations act restriction and adhere to ATF policies. GAO reviewed ATF policy and program documents, observed use of data systems at NTC, reviewed a generalizable sample of one system's records, and interviewed ATF officials at headquarters and NTC.

## What GAO Recommends

GAO recommends that ATF provide guidance to FFLs participating in A2K on the provision of records to ATF when they go out of business; align system capability with ATF policy to limit access to FRNP firearms purchaser information for ATF agents; and align timing and ATF policy for deleting MS records. ATF concurred with our recommendations.

View [GAO-16-552](#). For more information, contact Diana C. Maurer at (202) 512-9627 or [maurerd@gao.gov](mailto:maurerd@gao.gov), or Helen Desaulniers at (202) 512-4740 or [desaulniersh@gao.gov](mailto:desaulniersh@gao.gov).

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### ATF Did Not Always Comply with the Appropriations Act Restriction and Should Better Adhere to Its Policies

#### What GAO Found

To carry out its criminal and regulatory enforcement responsibilities, the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) has 25 firearms-related data systems, 16 of which contain retail firearms purchaser information from a federal firearms licensee (FFL)—such as firearms importers and retailers. GAO selected 4 systems for review that are used in the firearms tracing process, based on factors such as the inclusion of retail purchaser information and original data.

- The Out-of-Business Records Imaging System (OBRIS) stores nonsearchable images of firearms records from out-of-business FFLs. Such FFLs are required by law to provide their records to ATF.
- Access 2000 (A2K) provides servers for National Tracing Center (NTC) personnel to electronically search participating FFLs' records at their premises for firearms disposition information during a trace.
- The Firearm Recovery Notification Program (FRNP) maintains information on firearms that have not yet been recovered by law enforcement, but are suspected of being involved in criminal activity and are associated with an ATF criminal investigation.
- Multiple Sales (MS) includes firearms information from multiple sales reports. FFLs are required by law to report to ATF sales of two or more revolvers or pistols during 5 consecutive business days. ATF policy requires that certain information in MS be deleted after 2 years if the firearm has not been connected to a trace.

Of the 4 data systems, 2 fully comply and 2 did not always comply with the appropriations act restriction prohibiting consolidation or centralization of FFL records. ATF addressed these compliance issues during the course of GAO's review. ATF also does not consistently adhere to its policies. Specifically:

- OBRIS complies with the restriction and adheres to policy.
- A2K for in-business FFL records complies with the restriction. A2K for out-of-business FFL records did not comply with the restriction because ATF maintained these data on a single server at ATF. Thus, ATF deleted the records in March 2016. In addition, ATF policy does not specify how, if at all, FFLs may use A2K records to meet out-of-business record submission requirements. Such guidance would help ensure they submit such records.
- FRNP generally complies with the restriction. However, a 2007 through 2009 program using FRNP did not comply. ATF cancelled this program in 2009 and deleted the related data in March 2016. Also, a technical defect allows ATF agents to access FRNP data—including purchaser data—beyond what ATF policy permits. Aligning system capability with ATF policy would ensure that firearms purchaser data are only provided to those with a need to know.
- MS complies with the restriction, but ATF inconsistently adheres to its policy when deleting MS records. Specifically, until May 2016, MS contained over 10,000 names that were not consistently deleted within the required 2 years. Aligning the MS deletion policy with the timing of deletions could help ATF maintain only useful MS purchaser data and safeguard privacy.

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### Abbreviations

A2K	Access 2000
ATF	Bureau of Alcohol, Tobacco, Firearms and Explosives
DOJ	Department of Justice
FFL	federal firearms licensee
FIRES	Firearms Information Reporting System
FLS	Federal Licensing System
FOPA	Firearms Owners' Protection Act of 1986
FRNP	Firearm Recovery Notification Program
FTS	Firearms Tracing System
MS	Multiple Sales
NFA	National Firearms Act System
NFRTR	National Firearms Registration and Transfer Record System
NIBIN	National Integrated Ballistic Information Network
NICS	National Instant Criminal Background Check System
NSOT	National Firearms Act Special Occupational Tax System
NTC	National Tracing Center
OBRIS	Out-of-Business Records Imaging System
OMB	Office of Management and Budget
SWBWOC	Southwest Border Secondary Market Weapons of Choice

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June 30, 2016

The Honorable Charles E. Grassley  
Chairman  
Committee on the Judiciary  
United States Senate

The Honorable Jason Chaffetz  
Chairman  
Committee on Oversight and Government Reform  
House of Representatives

The Honorable Darrell Issa  
House of Representatives

As of 2013, there were an estimated 350 million firearms in the United States.<sup>1</sup> Although many are owned by law-abiding individuals, firearms can be used for illegal purposes, and were involved in approximately 10,000 murders in 2014 in the United States.<sup>2</sup> The federal government has an important role in combatting the illegal use of firearms, and must balance this with protecting the privacy rights of law-abiding gun owners.

The Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), a criminal and regulatory enforcement agency within the Department of Justice (DOJ), is responsible for the regulation of the firearms industry and enforcing federal statutes regarding firearms, including enforcing criminal statutes related to the illegal possession, use, transfer, or

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<sup>1</sup>This estimate is based on our analysis of data on firearms manufacturing, importing, and exporting from the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) from 1899 through 2013, including handguns, rifles, and shotguns. It does not include firearms produced for the U.S. military, but does include firearms sold to domestic law enforcement agencies. It does not include firearms imported to or exported from the United States illegally, or used firearms exported from the United States legally. It does not account for loss, breakage, or destruction of firearms. According to ATF, ATF's data are based, in part, on information that is reported by manufacturers, some of whom do not report their data in a timely manner, if at all.

<sup>2</sup>This figure is based on our analysis of data from the Federal Bureau of Investigation's Uniform Crime Reports. It does not include justifiable homicides or suicides.

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trafficking of firearms, among other things. The Gun Control Act of 1968,<sup>3</sup> as amended, established a system requiring federal firearms licensees (FFL)<sup>4</sup> to record and maintain records of firearms transactions and make these records available to ATF for inspection under certain circumstances. To carry out its enforcement responsibilities, ATF maintains certain computerized information on firearms, firearms transactions, and firearms purchasers.

Over the years, Congress has balanced the law enforcement need for firearms retail purchaser information with the competing interest of protecting the privacy of firearms owners. To achieve this balance, Congress requires FFLs to provide certain firearms transaction information to ATF, while also restricting ATF's maintenance and use of such information.<sup>5</sup> Since 1979, Congress has restricted ATF from using appropriated funds to consolidate or centralize FFL records within the department where ATF is located.<sup>6</sup> Through the years, members of Congress have raised questions about ATF's oversight of these data restrictions, including whether ATF is complying with legal standards for entering firearms records into its data systems, whether ATF is inappropriately using its data systems to track information about firearms owners, and whether ATF is complying with the restriction related to consolidating and centralizing data from FFL records. You asked us to review ATF's compliance with this restriction.

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<sup>3</sup>As originally enacted, the Gun Control Act of 1968 required FFLs to submit such reports and information as the Secretary of the Treasury prescribed by regulation and authorized the Secretary to prescribe such rules and regulations as deemed reasonably necessary to carry out the provisions of the act. At that time, ATF was part of the Department of the Treasury.

<sup>4</sup>FFLs are persons—including companies—licensed by ATF, pursuant to federal firearms laws and regulations, to engage in a firearms business, such as manufacturing, purchasing, and selling firearms. FFLs include firearms manufacturers, importers, wholesalers, and retailers, among other things.

<sup>5</sup>For the purposes of this report, ATF maintaining information means keeping information at an ATF facility in a variety of formats—such as electronic and paper copies. Depending on the type of information, statutory and policy restrictions apply to ATF's maintenance of the information, as discussed later in this report.

<sup>6</sup>In 2003, ATF was transferred from the Department of the Treasury to DOJ pursuant to the Homeland Security Act of 2002, Pub. L. No. 107-296, §§ 1111-1115, 116 Stat. 2135, 2274-80.

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This report examines the following objectives:

1. Identify the ATF data systems that contain retail firearms purchaser data and describe the characteristics of selected systems.<sup>7</sup>
2. Determine whether selected ATF data systems comply with the appropriations act restriction on consolidation or centralization of firearms records and adhere to ATF policies.

To address the first objective, we reviewed ATF policy and program documents to identify ATF data systems related to firearms, including ATF orders, system user manuals, and data submission forms. For the purposes of this report, “data systems” or “systems” refers to ATF’s data systems and system components, including what ATF refers to as “modules” of a larger system, and what ATF refers to as “programs” whose associated data are contained within related systems. We compared information from these policy and program documents to the systems identified in a GAO September 1996 report, and conducted searches of publicly available information to develop a comprehensive and current list of systems.<sup>8</sup> In order to identify the systems and better understand them and their contents, we spoke with ATF officials in headquarters and at ATF’s National Tracing Center (NTC). We also discussed these systems with ATF investigative and regulatory officials in the Baltimore and Los Angeles field offices, who provided varying perspectives due to geographic factors.

We selected four systems for a more in-depth review: Out-of-Business Records Imaging System (OBRIS), Access 2000 (A2K), Firearm Recovery Notification Program (FRNP), and Multiple Sales (MS). We selected systems that contained retail purchaser information and original

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<sup>7</sup>For the purposes of this report, “data systems” or “systems” refers to ATF’s data systems and system components, including what ATF refers to as “modules” of a larger system, and what ATF refers to as “programs” whose associated data are contained within related systems.

<sup>8</sup>GAO, *Federal Firearms Licensee Data: ATF’s Compliance with Statutory Restrictions*, [GAO/GGD-96-174](#) (Washington, D.C.: Sept. 11, 1996).



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records, among other criteria.<sup>9</sup> For the selected systems, we reviewed ATF data on the number of system records, among other things—for OBRIS and A2K for fiscal year 2015, and for FRNP and MS from fiscal years 2010 through 2015. We assessed the reliability of these data by interviewing ATF staff and reviewing relevant documentation, and concluded that these data were sufficiently reliable for the purposes of our report. We reviewed ATF policy and program documents to obtain in-depth descriptions of these selected systems, and discussed these systems with ATF officials. We visited NTC to observe the selected systems in operation.

To address the second objective, we reviewed relevant laws, including statutory data restrictions, and ATF policy and program documents. We also solicited the agency's interpretation of the restriction on consolidation or centralization of records as applied to each of the systems, and interviewed ATF officials regarding the data systems' compliance with that restriction and ATF policies. We visited NTC to observe how selected systems' data are collected, used, and stored. We observed NTC analysts using the selected systems and observed the extent to which the systems are searchable for retail purchaser information. For OBRIS, FRNP, and MS, we observed NTC analysts receiving and entering data into the systems and processing the original data submissions.

For A2K, we reviewed budgetary information to determine the source of funding for the system for fiscal year 2008 through fiscal year 2014. We also interviewed representatives from the contractor that manages A2K, and 3 of 35 industry members that use A2K. We selected industry members that had several years of experience using A2K and reflected variation in FFL size and type. Although our interviews with these industry members are not generalizable, they provided us with insight on the firearms industry's use of A2K.

In order to evaluate the contents of FRNP for the presence of retail purchaser information and adherence to the appropriations act restriction

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<sup>9</sup>A system was more likely to be selected if (1) it contained data unrelated to a criminal investigation, (2) a large percentage of system records contained retail purchaser information, (3) the retail purchaser information was searchable, or (4) ATF initiated the system—as opposed to ATF being statutorily required to maintain the system. App. I contains additional details on our selection criteria.

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and FRNP policies, we reviewed several fields of data for the entire population of records. During our site visit, we also reviewed additional fields of data for a generalizable sample of records and the associated submission forms that are used to populate the records.<sup>10</sup> We assessed the reliability of the FRNP data by conducting electronic tests of the data for obvious errors and anomalies, interviewing staff responsible for managing the data, and reviewing relevant documentation, and concluded that these data were sufficiently reliable for the purposes of our report. For MS, we observed the process of querying to identify particular records.

We determined the selected data systems' compliance with the appropriations act restriction, and compared them to multiple ATF policies on collection and maintenance of information, and criteria in *Standards for Internal Control in the Federal Government* related to control activities for communication and for the access to and design of information systems.<sup>11</sup> See appendix I for additional information on our scope and methodology.

We conducted this performance audit from January 2015 to June 2016 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

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<sup>10</sup>All percentage estimates from the review of the generalizable sample of FRNP records have margins of error at the 95 percent confidence level of plus or minus 5 percentage points or less, unless otherwise noted. All percentage estimates from the review of submission forms have margins of error at the 95 percent confidence level of plus or minus 3 percentage points or less, unless otherwise noted. See app. I for additional details on our sampling methodology and record review.

<sup>11</sup>See GAO, *Standards for Internal Control in the Federal Government*, [GAO/AIMD-00-21.3.1](#) (Washington, D.C.: Nov. 1, 1999), and *Standards for Internal Control in the Federal Government*, [GAO-14-704G](#) (Washington, D.C.: Sept. 10, 2014).

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## Background

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### ATF Roles and Responsibilities

ATF's mission is to protect communities from violent criminals, criminal organizations, and illegal use and trafficking of firearms, among other things. To fulfill this mission, ATF has 25 field divisions located throughout the United States. To efficiently and effectively carry out its criminal enforcement responsibilities related to firearms, ATF maintains certain computerized information on firearms, firearms transactions, and firearms purchasers. To balance ATF's law enforcement responsibility with the privacy of firearms owners, Congress has required FFLs to provide ATF certain information about firearms transactions and the ownership of firearms while placing restrictions on ATF's maintenance and use of such data. In addition to its enforcement activities, ATF also regulates the firearms industry, including issuing firearms licenses to prospective FFLs, and conducting FFL qualification and compliance inspections.

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### Firearms Tracing Process

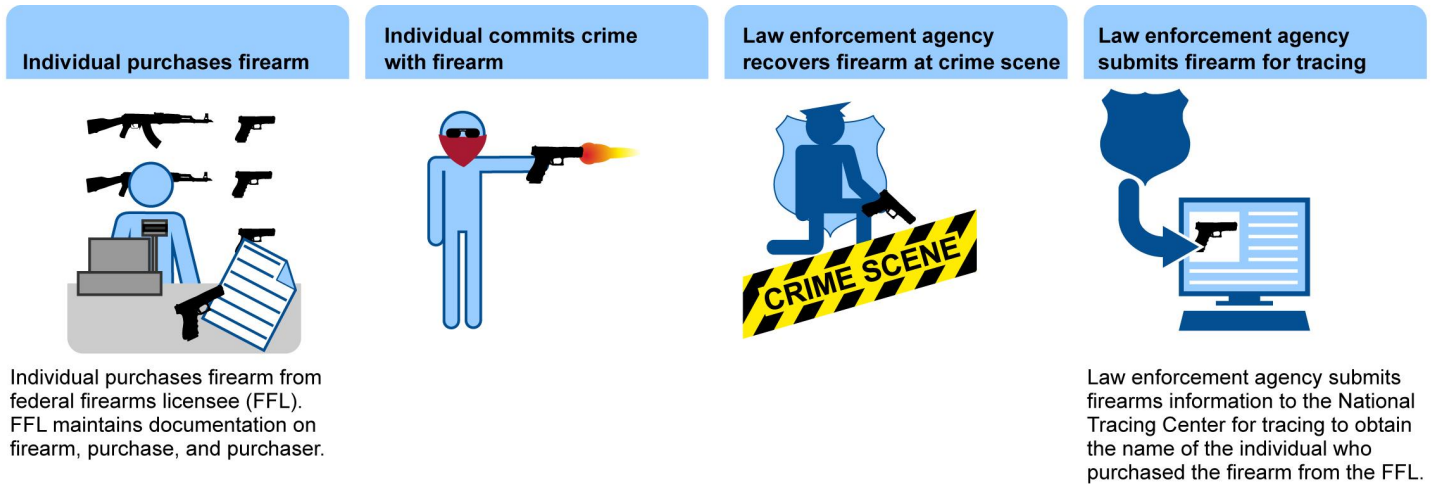
A critical component of ATF's criminal enforcement mission is the tracing of firearms used in crimes to identify the first retail purchaser of a firearm from an FFL. The Gun Control Act of 1968, as amended, established a system requiring FFLs to record firearms transactions, maintain that information at their business premises, and make these records available to ATF for inspection and search under certain prescribed circumstances, such as during a firearms trace.<sup>12</sup> The system was intended to permit law enforcement officials to trace firearms involved in crimes while allowing the records themselves to be maintained by the FFLs rather than by a governmental entity.<sup>13</sup> Figure 1 shows one possible scenario in which a firearm is purchased at an FFL, the FFL maintains records on the purchase, the firearm is used in a crime, and a law enforcement agency recovers the firearm and submits it for tracing.

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<sup>12</sup>Pub. L. No. 90-618, 82 Stat. 1213 (Oct. 22, 1968).

<sup>13</sup>For many firearms traces, ATF must consult FFLs to obtain the relevant firearms information. However, there are some categories of records that ATF does maintain. For example, when an FFL goes out of business permanently, the FFL must submit its records to ATF within 30 days. 18 U.S.C. § 923(g)(4).

**Figure 1: Possible Scenario of a Firearm’s Purchase, Use in a Crime, and Law Enforcement Recovery**



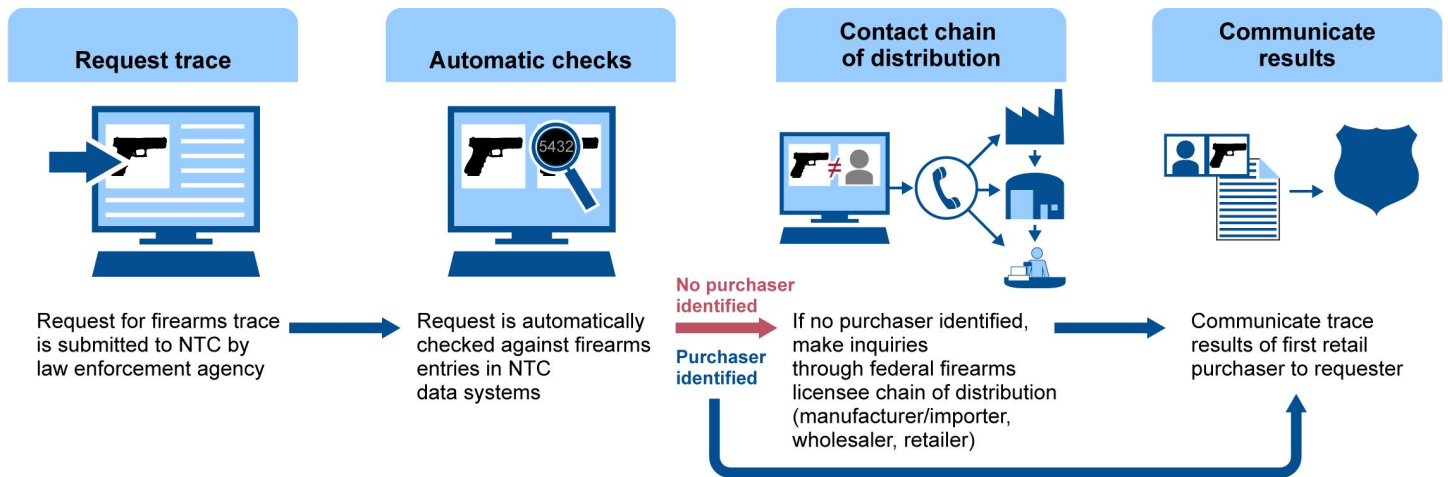
Source: GAO analysis of Bureau of Alcohol, Tobacco, Firearms and Explosives information. | GAO-16-552

Through the use of these records maintained by FFLs and provided to ATF in certain circumstances, ATF provides firearms tracing services to federal, state, local, and foreign law enforcement agencies.<sup>14</sup> The objective of the trace is to identify the first retail purchaser of the firearm.<sup>15</sup> To carry out its firearms tracing responsibilities, ATF maintains a firearms tracing operation at NTC in Martinsburg, West Virginia. As shown in figure 2, NTC traces firearms suspected of being involved in crimes to the first retail purchaser to assist law enforcement agencies in identifying suspects.

<sup>14</sup>These records include, among other things, an acquisition and disposition logbook and firearms transaction records (ATF Form 4473). Firearms transaction records include, among other things, the name of the purchaser, the type of firearm purchased, and the firearm model and serial number.

<sup>15</sup>According to ATF officials, subsequent purchasers of firearms may also be identified through certain NTC systems.

**Figure 2: Firearms Tracing Process at National Tracing Center (NTC)**



Source: GAO analysis of Bureau of Alcohol, Tobacco, Firearms and Explosives information. | GAO-16-552

NTC generally receives trace requests through eTrace, a web-based submission system, but also receives requests by fax, telephone, and mail.<sup>16</sup> To conduct a trace, NTC must receive the recovered firearm’s description—including manufacturer and serial number—from the law enforcement agency. NTC determines the ownership of the firearm by first conducting automated checks of data systems that are maintained at NTC. If these automated checks do not identify a matching firearm description within the systems, an NTC analyst contacts the chain of distribution for the firearm—the series of businesses that are involved in manufacturing and selling the firearm. For example, after automated data system checks, an NTC analyst may call the manufacturer of the firearm, who informs NTC that the firearm was sold to a certain distributor. The NTC analyst will then call that distributor, and so on until the individual is

<sup>16</sup>eTrace is a paperless firearms trace request submission system and an interactive firearms trace analysis tool that provides an electronic exchange of crime gun incident-based data in a secure web-based environment. Through eTrace, law enforcement agencies can electronically submit firearms trace requests, monitor the progress of traces, retrieve completed trace results, and query firearms trace-related data. eTrace includes analytical and download capabilities for ATF’s firearms trace information, including selective field searches and statistical reporting. According to ATF, as of May 5, 2016, eTrace has registered more than 6,160 law enforcement agencies, including agencies in 42 foreign countries, and more than 42,570 individual eTrace accounts have been provisioned for law enforcement users.

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identified. For many traces, an FFL in the chain of distribution has gone out of business, so an NTC analyst must consult the FFL's out-of-business records, which are also maintained by NTC.

ATF documents each trace request and its results, and provides that information to the law enforcement requester. ATF considers a request completed when it traces the firearm to a retail purchaser, or when it cannot identify the purchaser for various reasons. For example, the description of the firearm as submitted by the requester may not have contained sufficient information to perform a trace. For fiscal year 2015, ATF received a total of 373,349 trace requests, completed 372,992 traces, and identified a retail FFL or a purchaser of the traced firearm in about 68 percent of the completed traces.<sup>17</sup>

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## Statutory Data Restrictions

Since the passage of the Gun Control Act of 1968, Congress has passed provisions that place restrictions on ATF's handling of FFL records. In 1978, citing to the general authorities contained in the Gun Control Act, ATF proposed regulations that would have required FFLs to report most of their firearms transactions to ATF through quarterly reports. Under the proposed regulations, these FFL reports of sales and other dispositions would not have identified a nonlicensed transferee, such as a retail purchaser, by name and address.<sup>18</sup> These proposed regulations prompted concerns from those who believed that the reporting requirements would lead to the establishment of a system of firearms registration. Since then, Congress has placed restrictions on ATF's use of funds to consolidate or centralize firearms records, as discussed below.

- In 1978, the Treasury, Postal Service, and General Government Appropriations Act, 1979, prohibited the use of funds for administrative expenses in connection with the consolidation or centralization of FFL records at the agency, or the final issuance of

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<sup>17</sup>The remaining 32 percent of completed traces did not identify a retail FFL or a purchaser of the traced firearm.

<sup>18</sup>43 Fed. Reg. 11,800 (Mar. 21, 1978).

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the 1978 proposed regulations.<sup>19</sup> This restriction was included in each of ATF's annual appropriations through fiscal year 1993.<sup>20</sup>

- In 1993, the Treasury, Postal Service, and General Government Appropriations Act, 1994, removed the reference to the 1978 proposed rules, but expanded the prohibition to include the consolidation or centralization of portions of records, and to apply to the use of funds for salaries as well as administrative expenses.<sup>21</sup> This provision was included in each of ATF's annual appropriations through fiscal year 2011.
- In 2011, the Consolidated and Further Continuing Appropriations Act, 2012, made this restriction on ATF's use of funds permanent.<sup>22</sup> Specifically, the act stated

"[t]hat no funds appropriated herein or hereafter shall be available for salaries or administrative expenses in connection with consolidating or centralizing, within the

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<sup>19</sup>Pub. L. No. 95-429, 92 Stat. 1001, 1002 (1978). The appropriations act restriction provided "[t]hat no funds appropriated herein shall be available for administrative expenses in connection with consolidating or centralizing within the Department of the Treasury the records of receipt and disposition of firearms maintained by Federal firearms licensees or for issuing or carrying out any provisions of the proposed rules of the Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms, on Firearms Regulations, as published in the Federal Register, volume 43, number 55, of March 21, 1978."

<sup>20</sup>In addition, a provision of the Firearms Owners' Protection Act of 1986 (FOPA), codified at 18 U.S.C. § 926(a), prohibited ATF from issuing any rule or regulation after the date of the enactment of FOPA that requires (1) records to be maintained pursuant to certain statutory provisions, or any portion of the contents of such records, to be recorded at or transferred to a facility owned, managed, or controlled by the United States or any state or political subdivision thereof or (2) any systems of registration of firearms, firearms owners, or firearms transactions or dispositions to be established.

<sup>21</sup>Pub. L. No. 103-123, 107 Stat. 1226, 1229 (1993), stated "[t]hat no funds appropriated herein shall be available for salaries or administrative expenses in connection with consolidating or centralizing, within the Department of the Treasury, the records, or any portion thereof, of acquisition and disposition of firearms maintained by Federal firearms licensees."

<sup>22</sup>Pub. L. No. 112-55, 125 Stat. 552, 609-610 (2011). An additional provision, first enacted in 1996, was also made permanent in the fiscal year 2012 appropriations act. The Omnibus Consolidated Appropriations Act, 1997, limited the methods ATF could use to retrieve information from records transmitted to the agency by FFLs going out of business. It stated "[t]hat no funds under this Act may be used to electronically retrieve information gathered pursuant to 18 U.S.C. 923(g)(4) by name or personal identification code." Pub. L. No. 104-208, 110 Stat. 3009, 3009-319 (1996).

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Department of Justice, the records, or any portion thereof, of acquisition and disposition of firearms maintained by Federal firearms licensees.”

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## ATF Has 16 Data Systems That Contain Retail Firearms Purchaser Data; Selected Systems Are Involved in Tracing Process

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### ATF Has 16 Systems with Retail Purchaser Data

ATF collects and maintains data from the firearms industry to carry out its criminal and regulatory enforcement responsibilities, and has established 25 national ATF data systems relating to firearms to maintain the data it collects. Of these 25 data systems, the following 16 data systems contain retail firearms purchaser information:

1. Access 2000 (A2K)
2. ATF NICS Referral
3. Firearm Recovery Notification Program (FRNP)
4. Firearms and Explosives Import System
5. Firearms Information Reporting System
6. Firearms Tracing System<sup>23</sup>
7. eTrace
8. Interstate Theft
9. Multiple Sales (MS)
10. National Firearms Act System / National Firearms Registration and Transfer Record System

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<sup>23</sup>The Firearms Tracing System contains data related to, for example, FRNP, Interstate Theft, MS, and Trace, which we refer to as “systems” for the purposes of this report.



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11. National Integrated Ballistic Information Network
  12. NFORCE
  13. NSPECT
  14. Out-of-Business Records Imaging System (OBRIS)
  15. Suspect Person Database
  16. Trace

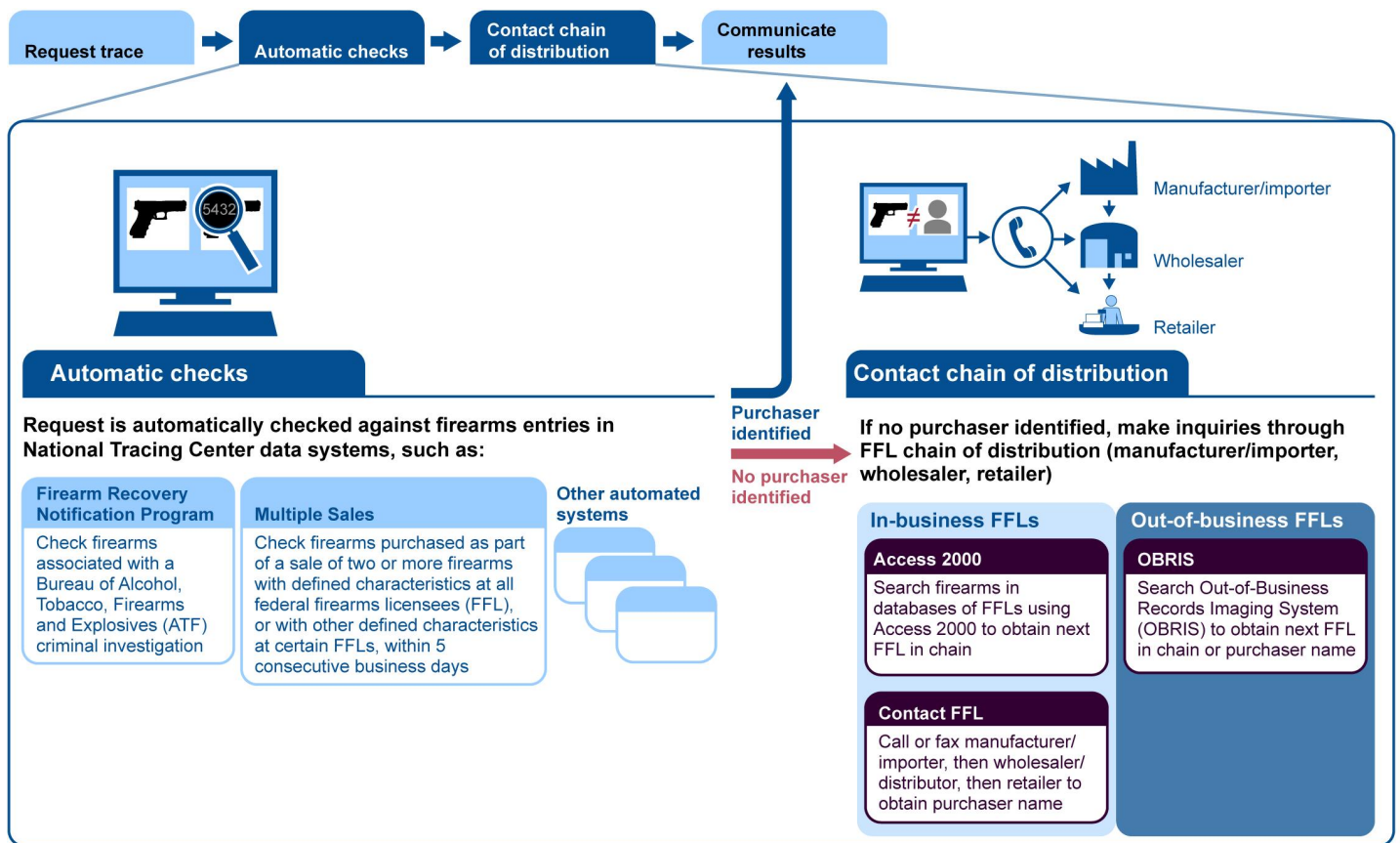
More details on these systems are provided in appendix II.

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### Four ATF Systems We Selected Are Used in the Firearms Tracing Process

From the 16 data systems that contain retail purchaser information, we selected 4 systems for an in-depth review of compliance with the appropriations act restriction on consolidation or centralization, and adherence to ATF policies: OBRIS, A2K, FRNP, and MS, including Demand Letter 3. See appendix I for our selection criteria. These systems are operated and maintained by NTC and play a significant role in the firearms tracing process as shown in figure 3.

**Figure 3: Role of Selected Data Systems in the Firearms Tracing Process**



Source: GAO analysis of ATF information. | GAO-16-552

## OBRIS

OBRIS is a repository of nonsearchable images of firearms records that allows NTC employees to manually search for and retrieve records during a firearms trace using an FFL number and a firearm description (e.g.,

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serial number).<sup>24</sup> Out-of-business records are integral to the firearms tracing process. According to ATF officials, in approximately 35 to 38 percent of trace requests, there is at least one entity in the chain of distribution that has gone out of business. Therefore, in more than one-third of firearms trace requests, NTC analysts must consult OBRIS at least once. According to ATF data, as of May 5, 2016, there were 297,468,978 images of firearms records in OBRIS.<sup>25</sup> Further, in fiscal year 2015, NTC accomplished 134,226 of 372,992 total completed trace requests using OBRIS.<sup>26</sup>

OBRIS was developed in 2006 to assist NTC with maintaining the out-of-business FFL records that are received each year. By statute, when FFLs discontinue their businesses and there is no successor, the records required to be kept under the Gun Control Act of 1968, as amended, must be delivered within 30 days to the Attorney General.<sup>27</sup> This includes all acquisition and disposition logbooks, firearms transactions records—such as Form 4473 that contains purchaser information—and other required records. NTC receives an average of about 1.9 million out-of-business records per month, of which a large percentage are paper-based.

Since 2006, when paper records are received from an FFL that has gone out of business, NTC scans them as TIFF image files and stores them in OBRIS.<sup>28</sup> By design, the files are stored as images (with no optical character recognition) so that they cannot be searched using text

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<sup>24</sup>The predecessor to OBRIS—the Microfilm Retrieval System—was one of the systems we reviewed for compliance in our prior report, [GAO/GGD-96-174](#). In our prior report, we referred to the Microfilm Retrieval System as the Out-of-Business Records System. For the purposes of this report, nonsearchable means that the document is not searchable through character recognition using text queries. To locate OBRIS records, NTC employees manually search records identified through an index by FFL number or firearm description.

<sup>25</sup>ATF does not know how many firearms are represented by these OBRIS images since one image or multiple images can represent one or more firearms.

<sup>26</sup>A completed trace request is a trace request that has resulted in a successful identification of the first retail purchaser of the firearm, or that cannot identify the purchaser for various reasons.

<sup>27</sup>See 18 U.S.C. § 923(g)(4).

<sup>28</sup>Tagged-Image File Format (TIFF) is a computer file format used for storing images.

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queries.<sup>29</sup> In addition, ATF sometimes receives electronic FFL out-of-business records in the forms of computer external removable drives and hard drives. In these cases, ATF converts the data to a nonsearchable format consistent with OBRIS records. During processing of OBRIS records, NTC conducts a quality-assurance process, including document sorting, scanning, and error checks on 100 percent of the records received. Officials stated that the imaged records are maintained indefinitely in OBRIS. For more information on OBRIS, see appendix III.

## A2K

ATF implemented A2K in 1995 at the request of firearms industry members to allow manufacturer, importer, and wholesaler FFLs to more efficiently respond to requests from NTC for firearms traces.<sup>30</sup> By statute, FFLs are required to respond within 24 hours to a firearms trace—a request from ATF for firearms disposition information—needed for a criminal investigation.<sup>31</sup> Normally, when an NTC analyst contacts an FFL in the chain of distribution during a trace, the analyst contacts the FFL by phone, fax, or e-mail. ATF officials reported that this can be burdensome if the FFL receives a large number of trace requests, and that such requests can number more than 100 per day. With A2K—a voluntary program—the participating industry member uploads electronic firearms disposition records (i.e., information on the FFL or, in rare cases, the individual to whom the firearm was sold) onto a server that ATF owns and maintains, but is located at the site of the industry member.<sup>32</sup> A2K provides a secure user web interface to this server, through which authorized NTC personnel can search—by firearm serial number only—to obtain disposition data for a firearm during a trace.

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<sup>29</sup>Optical character recognition technology allows recognition of printed text using optical scanners and software, which convert the text to digital data.

<sup>30</sup>According to ATF, A2K FFLs are manufacturers, importers, and wholesalers, but not retailers. However, NTC officials stated that they are not aware whether an A2K industry member has a retail store as part of its operations, as was the case with one A2K industry member we interviewed. For the purposes of this report, the term “industry members” refers to FFLs participating in A2K.

<sup>31</sup>18 U.S.C. § 923(g)(7). See also, 27 C.F.R. § 478.25a.

<sup>32</sup>According to ATF, as of April 25, 2016, 4 of 35 industry members own their own A2K servers.

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According to the A2K memorandum of understanding with industry members, each participating industry member maintains ownership over its data. Further, NTC access to A2K's search function is limited to analysts conducting traces for each particular industry member. NTC analysts access A2K using a different URL and login information for each participating industry member, and can only retrieve the disposition data for the particular firearm they are tracing.

Participation in A2K is voluntary and, according to ATF officials and the three industry members we spoke with, can reduce an industry member's costs associated with responding to firearms trace requests. According to ATF officials, as of April 25, 2016, there are 35 industry members using A2K, which account for 66 manufacturer, importer, and wholesaler FFLs. All three of the participating industry members we spoke with agreed that A2K has been beneficial since it reduces the industry member resources necessary to respond to trace requests. A2K also benefits NTC by providing immediate access to industry member data at all times, thereby allowing tracing operations to continue outside of normal business hours, which can be crucial for urgent trace requests. According to ATF data, as of March 17, 2016, there were 290,256,532 firearms in A2K. Further, in fiscal year 2015, NTC accomplished 130,982 of 372,992 total completed trace requests using A2K.

## FRNP

Established in 1991, FRNP (formerly known as the Suspect Gun Program) provides a criminal investigative service to ATF agents by maintaining a database of firearms that have not yet been recovered by law enforcement, but are suspected to be involved in criminal activity.<sup>33</sup> An ATF agent submits firearms information to FRNP, in connection with a specific ATF criminal investigation, to flag a particular firearm so that in the event that it is recovered and traced at some future time, the requesting agent will be notified.

A request to enter a firearm into FRNP could start with an ATF agent recovering another firearm during an undercover investigation of illegal sales from a firearms trafficker. By searching eTrace, the agent may discover that the recovered firearm was part of a multiple sale with three

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<sup>33</sup>For purposes of this report, we refer to the system as the Firearm Recovery Notification Program (FRNP), even when discussing its prior use when it was called the Suspect Gun Program.

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other firearms.<sup>34</sup> The ATF agent then may request that the other three firearms be entered into FRNP because they are associated with the firearm the agent recovered and, therefore, are likely to also be trafficked. ATF officials stated that, in this hypothetical case, it is likely that those three firearms, if recovered and traced in the future, would support a potential firearms trafficking case. If the firearms are in FRNP, if and when they are recovered and traced, NTC would notify the requesting agent, who could then contact the agency that recovered and traced the firearms to coordinate building such a case.

To enter a firearm into FRNP, an ATF agent submits ATF Form 3317.1 (see app. IV) to NTC. According to ATF, no other law enforcement agencies may submit firearms to FRNP or view information in the system; only ATF agents and NTC staff have access. When a firearm is recovered in a crime and is traced, NTC conducts an automated check to determine whether the firearm description in the trace request matches a firearm description in FRNP. If so, an analyst will validate that the entries match. If they do, NTC generally notifies the ATF agent who submitted the firearm for inclusion in FRNP that the firearm has been recovered and traced. Then, the analyst completes the trace and sends the results to the requester of the trace. Occasionally, in submitting the firearm to FRNP, the agent directs NTC to not complete the trace on the firearm in the event that the firearm is recovered and traced (i.e., not provide the trace results to the law enforcement agency who requested the trace).<sup>35</sup> For example, an agent might want to prevent trace information from being released to protect an undercover operation or other investigation. According to ATF data, as of May 3, 2016, there were 174,928 firearms and the names of 8,705 unique persons (e.g., criminal suspects, firearms purchasers, associates) in FRNP, making up 41,964 total FRNP

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<sup>34</sup>eTrace provides registered users with immediate access to query their own firearms trace-related data. Other law enforcement agencies can also use eTrace to check the tracing status of a firearm that they have recovered and submitted for tracing. According to ATF documentation, their access would be limited to those firearms submitted for tracing by their agency or, according to ATF officials, by another agency in their state if both agencies have elected to participate in collective data sharing. eTrace does not allow non-ATF users to search other ATF data systems, such as FRNP or MS.

<sup>35</sup>According to ATF data, of the 37,420 firearms added to FRNP in fiscal years 2010 through 2015, about 14 percent have this designation.

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records.<sup>36</sup> Further, in fiscal year 2015, NTC accomplished 110 of 372,992 total completed trace requests using FRNP.<sup>37</sup> Also, according to ATF data, as of May 5, 2016, there were 23,227 firearms in FRNP that had been linked to a firearms trace.<sup>38</sup>

Once the ATF investigation that led to the FRNP firearms submission has been closed, any FRNP entries associated with that investigation are to be labeled as “inactive” in FRNP. Information from inactive records is used to assist with the tracing process, but when a trace hits on an inactive FRNP record, NTC does not notify the ATF agent who submitted the firearm since the associated investigation is closed and the information would no longer be useful to the agent. According to our review of all FRNP records, as of July 2015, about 16 percent of the 41,625 records were designated “active” and about 84 percent were designated “inactive.” Inactive records remain in the system for tracing purposes. The original submission form is also preserved as a digital image.<sup>39</sup>

MS

MS was developed in 1995 to collect and track reports of the purchase by one individual of two or more pistols or revolvers, or both, at one time or during any 5 consecutive business days. FFLs are required by statute to

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<sup>36</sup>Based on our review of a sample of FRNP records, an estimated 51 percent of records contain 1 firearm, an estimated 22 percent of records contain 2 firearms, and an estimated 18 percent of records contain between 3 and 7 firearms. The maximum number of firearms we observed in a single FRNP record from this sample was 116 firearms.

<sup>37</sup>FRNP’s purpose is to provide a criminal investigative service to ATF agents. As part of the firearms tracing process, the records are also used for traces. ATF officials reported that the number of firearms in FRNP is small in comparison to the universe of guns that are traced. Therefore, the percentage of traces that are completed using FRNP is small.

<sup>38</sup>Based on our review of a sample of FRNP records, an estimated 18 percent of records contain at least 1 firearm that has been linked to a firearms trace, including an estimated 6 percent of records with 2 or more firearms linked to a trace and an estimated 11 percent of records with 1 firearm linked to a trace (numbers do not sum to 18 percent due to rounding). The remaining estimated 82 percent of FRNP records contain firearms that have not been linked to firearms traces. FRNP records may be linked to a trace without having been used to complete a trace, since a different system, such as MS, might contain the original information on the purchaser used to complete a trace.

<sup>39</sup>ATF officials reported that, after entry into FRNP, the submission form is saved as a nonsearchable pdf file into a shared NTC drive.

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report these sales to ATF.<sup>40</sup> The multiple sales reports are completed by FFLs, submitted to NTC using ATF form 3310.4 (see app. V), and entered into MS. According to ATF, these reports, when cross-referenced with firearms trace information, serve as an important indicator in the detection of potential firearms trafficking. They can also allow successful tracing of older firearms that have reentered the retail market.

MS also maintains the information from Demand Letter 3 reports.<sup>41</sup> In 2011, ATF issued Demand Letter 3 to dealer and pawnbroker FFLs located in Arizona, California, New Mexico and Texas. The letter requires these FFLs to prepare reports of the purchase or disposition of two or more semiautomatic rifles capable of accepting a detachable magazine and with a caliber greater than .22, at one time or during any 5 consecutive business days, to a person who is not an FFL. According to ATF, this information is intended to assist ATF in its efforts in investigating and combatting the illegal movement of firearms along and across the southwest border. Demand Letter 3 reports are completed by FFLs, submitted to NTC using ATF form 3310.12 (see app. VI), and entered into MS.

According to ATF officials and our observations, Demand Letter 3 and multiple sales reports are managed identically within MS. During a firearms trace, MS is automatically checked for a match with the firearm serial number. If a match is found, the trace time can be substantially shortened since the retail FFL and purchaser name to complete the trace are contained within the MS record. According to ATF data, as of May 3, 2016, there were 8,950,209 firearms in MS, making up 3,848,623 total MS records. Further, in fiscal year 2015, NTC accomplished 15,164 of 372,992 total completed trace requests using MS.

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<sup>40</sup>18 U.S.C. § 923(g)(3)(A). See also 27 C.F.R. 178.126a. MS was one of the systems we reviewed for compliance in our prior report, [GAO/GGD-96-174](#).

<sup>41</sup>Pursuant to 18 U.S.C. § 923(g)(5)(A), the Attorney General may issue letters requiring FFLs to submit information required to be kept and maintained under the Gun Control Act of 1968, as amended, for specified time periods. Demand Letter 3 is issued under this authority. In addition to Demand Letter 3, there are two other letters that are issued to FFLs. Demand Letter 1 is issued to FFLs that do not comply with their statutory responsibility to respond within 24 hours to firearms trace requests. Demand Letter 2 is sent to FFLs who had 10 or more firearms traced to them the previous calendar year with a “time-to-crime” of 3 years or less.



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In November 1995, ATF implemented a policy to computerize multiple sales reports at NTC, which now also applies to Demand Letter 3 reports.<sup>42</sup> The original multiple sales or Demand Letter 3 paper report received from the FFL is scanned in a nonsearchable, TIFF image format and tagged with the MS transaction number. The TIFF file is then stored in an image-only repository, and is retained indefinitely. However, as part of the computerization policy, ATF included a requirement for deleting firearms purchaser names from MS 2 years after the date of sale if such firearms are not connected to a trace.<sup>43</sup> ATF preserves the remainder of the data, such as the firearm description, for the purpose of supporting investigations. In contrast, if an MS record is connected to a firearms trace, then ATF preserves the entire record, including purchaser information, in the system. MS reports are available to any ATF staff that has access to eTrace but not to outside law enforcement agencies with eTrace access. However, after the purchaser name in a MS record has been deleted in accordance with the 2-year deletion policy, only NTC officials have access to this information in the digital image of the original multiple sales or Demand Letter 3 reports. If an ATF agent needs to see the deleted information, the agent must contact NTC.

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<sup>42</sup>Before November 1995, ATF required that multiple sales reports be maintained by its field divisions. According to ATF, these divisions in the past maintained multiple sales reports in a variety of ways: some used local computer information tracking systems, others used alphabetical card files, and before 1987 some used the Department of the Treasury's Enforcement Communications System, a law enforcement data system that includes centralized databases used by Treasury and other law enforcement agencies.

<sup>43</sup>Such firearms—that have not been connected to a trace—have not been recovered by local law enforcement as part of a criminal investigation and, therefore, law enforcement officials have not needed information, such as the original purchaser's name, in order to support their investigation.

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## ATF Did Not Always Comply with the Appropriations Act Restriction and Does Not Consistently Adhere to Its Policies on Maintenance of Firearms Data

Of the four data systems we reviewed, two systems were in full compliance with the appropriations act restriction. The other two data systems did not always comply with the restriction, although ATF addressed the compliance issues during the course of our review. In addition, three data systems could better adhere to ATF policies.

Specifically:

- **OBRIS** complies with the appropriations act restriction and adheres to ATF policies.
- **A2K** for in-business industry members' records complies with the appropriations act restriction, but ATF's collection and maintenance of A2K out-of-business records in A2K on a server at NTC violated the appropriations act restriction. ATF deleted the records from the server in March 2016. In addition, industry members may benefit from clearer ATF guidance to ensure that they are submitting out-of-business records as required.
- **FRNP** generally complies with the appropriations act restriction. However, a regional program using FRNP from 2007 through 2009 did not comply with the restriction, and ATF removed the data it collected through this program from FRNP in March 2016.<sup>44</sup> Further, FRNP generally adheres to ATF policies, but a technical defect allows ATF agents to view and print FRNP data beyond what ATF policy permits.
- **MS** complies with the appropriations act restriction, but ATF continues to inconsistently adhere to its own policy when deleting these records.

For a more detailed legal analysis of compliance with the appropriations act restriction, see appendix VII.

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<sup>44</sup>The regional program operated from June 8, 2007 to October 2, 2009.

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Framework for Legal  
Analysis Set Forth in 1996  
Report

We previously considered ATF's compliance with the restriction on using appropriated funds for consolidation or centralization in connection with ATF's Microfilm Retrieval System and MS in 1996.<sup>45</sup> In that report, we stated that the appropriations act restriction did not preclude all information practices and data systems that involved an element of consolidation or centralization. We interpreted the restriction in light of its purpose and in the context of other statutory provisions governing ATF's acquisition and use of information on firearms. We found that the two systems complied with the appropriations act restriction on the grounds that ATF's consolidation of records in these systems was incident to carrying out specific responsibilities set forth in the Gun Control Act of 1968, as amended, and that the systems did not aggregate data on firearms transactions in a manner that went beyond these purposes. We are employing a similar analytical approach to the systems under review here: we consider whether ATF's aggregation of records in each system serves a statutory purpose, and how it relates to that purpose.

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OBRIS Complies with the  
Appropriations Act  
Restriction and Adheres to  
ATF Data-Processing  
Policies

OBRIS complies with the appropriations act restriction and adheres to policies designed to help ensure that the system is in compliance with the restriction. FFLs are specifically required to submit records to ATF when going out of business, and the system limits the accessibility of key firearms records information, such as retail purchaser data. As we reported in 1996, ATF first issued regulations in 1968 requiring FFLs that permanently go out of business to deliver their firearms transaction records to the federal government within 30 days.<sup>46</sup> This provided a means of accessing the records for firearms tracing purposes after an FFL went out of business. The legislative history related to ATF's fiscal year 1979 appropriation did not provide any indication that Congress intended a change in ATF's existing practice. In 1986, the Firearms Owners' Protection Act (FOPA) codified this regulatory reporting

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<sup>45</sup>[GAO/GGD-96-174](#). ATF refers to the predecessor to OBRIS as the Microfilm Retrieval System. At the time of our 1996 report, we referred to it as the Out-of-Business Records System. At that time, MS only included multiple sales reports, and we referred to it as the Multiple Sales System.

<sup>46</sup>26 C.F.R. § 178.127 (1969). See 33 Fed. Reg. 18,555, 18,571 (Dec. 14, 1968).

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requirement, affirming ATF's authority to collect this information.<sup>47</sup> In 1996, we also reported that the predecessor to OBRIS—the Microfilm Retrieval System—as designed, complied with the statutory data restrictions and that ATF operated the system consistently with its design.<sup>48</sup> We found that the Microfilm Retrieval System included in a computerized index the information necessary to assist ATF in completing a firearms trace, and did not aggregate information in a manner beyond that necessary to implement the Gun Control Act.<sup>49</sup> Notably, ATF's system of microfilmed records did not capture and store certain key information, such as firearms purchaser information, in a searchable format.

In response to logistical challenges and technological advances, ATF developed OBRIS in 2006 as the repository to maintain digital images of out-of-business FFL records. ATF transitioned from using microfilm images of records to scanning records into OBRIS as digital images not searchable through character recognition, consistent with ATF's design and use of its prior Microfilm Retrieval System.<sup>50</sup> It is our view that, like its microfilm predecessor system, OBRIS also complies with the appropriations act restriction because OBRIS's statutory basis and

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<sup>47</sup>Pub. L. No. 99-308, § 103, 100 Stat. 449, 453-456 (1986) (codified at 18 U.S.C. § 923(g)(4)). The Senate-passed version of FOPA would have prohibited the Secretary of the Treasury (where ATF was located at the time) from maintaining out-of-business records at a centralized location and from entering them into a computer for storage or retrieval. This restrictive provision was dropped from the version of the bill passed by Congress. S. 49, 99th Cong., 1st Sess. (1985).

<sup>48</sup>ATF refers to the predecessor to OBRIS as the Microfilm Retrieval System. At the time of our 1996 report, we referred to it as the Out-of-Business Records System. [GAO/GGD-96-174](#).

<sup>49</sup>The index contained the following information: (1) the cartridge number of the microfilm; (2) an index number; (3) the serial number of the firearm; (4) the FFL number; and (5) the type of document on microfilm.

<sup>50</sup>Conference reports accompanying ATF's appropriations during this period indicated support for its development of OBRIS. See H.R. Rep. No. 108-792, at 733 (2004) (Conf. Rep.) (accompanying the Consolidated Appropriations Act, 2005, Pub. L. No. 108-447, 118 Stat. 2809), and H.R. Rep. No. 109-272, at 82 (2005) (Conf. Rep.) (accompanying the Science, State, Justice, Commerce, and Related Agencies Appropriations Act, 2006, Pub. L. No. 109-108, 119 Stat. 2290).

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accessibility are essentially the same as the prior system.<sup>51</sup> As with the prior system, OBRIS generally allows users to identify potentially relevant individual records through manual review by searching an index using an FFL number. Other information, specifically firearms purchaser information, remains stored in nonsearchable images, and is not accessible to ATF through a text search.<sup>52</sup>

In OBRIS, ATF put data processing policies in place to maintain records in compliance with the appropriations act restriction. Specifically, when an FFL going out of business sends records to NTC, according to ATF policy and verified by our observations, NTC personnel follow policies to sort and scan the records in OBRIS in a manner that maintains the nonsearchability of the records. For example, NTC personnel spend extra time indexing the images by FFL number, and chronologically sorting FFL records, typically by month and by year.<sup>53</sup> When tracing a firearm, according to ATF policy and verified by our observations, NTC personnel generally identify a group of FFL records through the FFL number index, then manually search the dates of the FFL records to narrow in on a group of records that might contain the firearm being traced. NTC personnel then manually skim through each record in this group until they identify the relevant firearm information. According to NTC officials, NTC staff sometimes search thousands of pages of records to find the record that matches the trace request. This policy for a manual process to maintain and use records in OBRIS helps to ensure its compliance with

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<sup>51</sup>Additionally, ATF's implementing regulation for OBRIS remains essentially the same. As discussed earlier, FOIA prohibited ATF from issuing any rule or regulation after the date of the enactment of FOIA that requires (1) records to be maintained pursuant to certain statutory provisions, or any portion of the contents of such records to be recorded at or transferred to a facility owned, managed, or controlled by the United States or any state or political subdivision thereof or (2) any systems of registration of firearms, firearms owners, or firearms transactions or dispositions to be established. See 18 U.S.C. § 926(a). Since the passage of FOIA, there have been only technical administrative changes to this regulation. See 27 C.F.R. § 478.127.

<sup>52</sup>For this reason, the system also complies with the restriction in the fiscal year 2012 appropriations act described earlier on using funds to electronically retrieve out-of-business information by name or personal identification code.

<sup>53</sup>When ATF staff scan the records into OBRIS, batches of records are indexed—or tagged—with the FFL number associated with the records and the beginning purchase date in the batch of records. According to ATF officials, in approximately 1 percent of records, the records are also indexed by serial number, manufacturer, caliber, type, and acquisition date.

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the appropriations act restriction. For more details on OBRIS's data processing policies, see appendix III.

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### A2K for Out-of-Business Records Did Not Comply with the Appropriations Act Restriction, and ATF Could Improve Guidance to Industry

ATF maintains A2K for in-business industry members who store their own A2K data and maintained A2K for certain records of out-of-business industry members at NTC.<sup>54</sup> ATF's collection and maintenance of the records of out-of-business A2K industry members at NTC violated the appropriations act restriction on consolidation or centralization of firearms records. However, ATF officials transferred the records to OBRIS, and in March 2016 removed these records from A2K. In addition, industry members would benefit from clearer A2K guidance from ATF to ensure that they are submitting required out-of-business records.

### A2K for In-Business Records Complies with the Appropriations Act Restriction

A2K for firearms records of in-business industry members complies with the appropriations act restriction on consolidation and centralization based on A2K's statutory foundation and its features. ATF believes, and we agree, that A2K for in-business records appropriately balances the restriction on consolidating and centralizing firearms records with ATF's need to access firearms information in support of its mission to enforce the Gun Control Act of 1968, as amended.

Federal law requires FFLs to provide firearms disposition information to ATF within 24 hours in response to a trace request in the course of a criminal investigation.<sup>55</sup> ATF officials told us that they developed A2K in response to industry member requests for an automated option for responding to trace requests. Prior to A2K, FFLs could only respond to trace requests by having dedicated personnel research firearms disposition information and then submit that information to ATF by phone, fax, or e-mail. In contrast, A2K provides industry members—who voluntarily participate in A2K—with servers to facilitate automated

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<sup>54</sup>According to ATF, as of April 25, 2016, there are 35 industry members representing 66 manufacturer, importer, and wholesaler FFLs participating in A2K. Generally, retail FFLs are not able to participate in A2K. However, NTC officials stated that they are not aware whether an A2K industry member has a retail store as part of its operations, as was the case with one A2K industry member we interviewed. For the purposes of this report, the term "industry members" refers to FFLs participating in A2K.

<sup>55</sup>18 U.S.C. § 923(g)(7). With regard to the FOIA restriction on the issuance of certain rules or regulations, we note that there is no regulatory scheme for this system.

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A2K for Out-of-Business  
Records Did Not Comply with  
the Appropriations Act  
Restriction, and ATF Could  
Provide Clearer Guidance

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electronic responses to ATF trace requests.<sup>56</sup> Under A2K, industry members upload their electronic firearms disposition information onto the servers located at their premises on a regular basis. Industry members—not ATF—retain possession and control of their disposition records and, according to ATF officials, they may withdraw from A2K and remove their records from the servers at any time. A2K includes a secure user web interface to each of the servers and ATF may only obtain A2K disposition information by searching individual industry member servers by exact firearm serial number. Through this search, ATF obtains the same information from each industry member as it would otherwise obtain by phone, fax, or e-mail, and in similar disaggregated form.

Beginning in 2000, ATF maintained A2K disposition data from out-of-business industry members on a single partitioned server within NTC, and removed the records from the server in March 2016.<sup>57</sup> ATF's maintenance of the disposition records in this manner violated the appropriations act restriction on consolidation or centralization. This arrangement was not supported by any specific authority. As described earlier, A2K was designed as an alternative for FFLs to meet the requirement to respond promptly to ATF trace requests, which does not apply to FFLs once they go out of business. Another statutory provision requires FFLs to submit firearms records to ATF when they go out of business, and ATF has designed a separate system for this purpose—OBRIS—as described earlier.<sup>58</sup>

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<sup>56</sup>In 2004, the conference report accompanying ATF's 2005 appropriation indicated support for the expansion of A2K, pointing to the increased operational efficiency associated with ATF's immediate access to disposition records through the automated system. The report stated "[T]he conferees are aware that the Access 2000 program was initiated by ATF to improve the efficiency and reduce the costs associated with firearms tracing incurred by Federal Firearms Licensees (FFLs). . . . The conferees encourage the ATF to place more emphasis on this program and expand the number of partners to the greatest extent possible." H.R. Rep. No. 108-792, at 734 (2004) (Conf. Rep.).

<sup>57</sup>According to ATF officials, when an A2K participating industry member went out of business, NTC's A2K contractor remotely transferred the data on the A2K server to the server's backup disk and remotely deleted the data on the server itself. The eight industry members that went out of business between 2000 and 2012 all shipped their blank A2K servers back to NTC along with the backup disks with intact disposition information.

<sup>58</sup>18 U.S.C. § 923(g)(4).

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A2K for out-of-business records functioned differently than OBRIS and went beyond the consolidation of out-of-business records in that system incident to specific responsibilities under the Gun Control Act. As discussed earlier, out-of-business records are maintained as nonsearchable digital images in OBRIS to comply with the appropriations act restriction, while at the same time allowing ATF to perform its tracing function. ATF completed traces using A2K disposition data from out-of-business industry members through the same type of secure user web interface as used while the industry members were in business. According to ATF, this was more efficient than relying on OBRIS to complete firearms traces. Our observations of A2K out-of-business searches in August 2015 confirmed ATF officials' statements that these records were accessed in the same way as in-business records. Records were only retrievable by exact serial number search, in accordance with ATF policy. However, according to ATF officials, it would have been technically possible for ATF to reconfigure the server to allow the records to be queried by any field, including fields with retail purchaser information.

ATF agreed with our assessment that treating disposition information from industry members that go out of business in the same manner as disposition information from in-business industry members would violate the appropriations act restriction.<sup>59</sup> After we raised concerns about A2K out-of-business records on the server at NTC, ATF told us that they had begun a process of transferring the out-of-business A2K records from the server into OBRIS as digital images. ATF permanently deleted the records from the out-of-business A2K server in March 2016.

In addition, ATF could provide clearer ATF guidance to ensure that industry members submit out-of-business records in accordance with the Gun Control Act of 1968, as amended. These industry members and their corresponding FFLs are required to provide transaction forms, acquisition records, and disposition records to ATF within 30 days of going out of

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<sup>59</sup>According to ATF, when an FFL ceases participation in A2K, "that FFL's records become just like any other FFL records and, as such, must be stored in the same manner. Otherwise, records which were formerly accessible on a discrete basis under A2K would be readily accessible in a database which would, in our opinion based on the 1996 GAO Report, violate the appropriation rider. Our decision, therefore, was to ensure that A2K records have the same character and are retrievable in the same manner as any other out-of-business records."



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business. However, it is unclear how the requirements apply to industry members' A2K disposition data. A2K agreements specifically state that the A2K data belong to the industry member. Conversely, ATF requires that the ATF-owned A2K equipment be returned when industry members go out of business, which includes the hardware and software on which the data were housed at the industry member's location.

The A2K memorandums of understanding and ATF guidance to industry members do not specify that industry members may retain the backup disk or how A2K data may be used to meet the out-of-business record submission requirements to ATF, if at all. All of the eight industry members that have gone out of business have provided their backup disks with data to ATF. According to ATF, six industry members separately provided their acquisition and disposition information, while the other two industry members, which were licensed importers, only provided invoices. According to ATF officials, discussions with these industry members did not include the industry member's option to keep the backup disk where the data are stored or whether submitting the backup disk to ATF would fulfill part of the industry member's submission requirement. Further, the three industry members we spoke with corroborated that ATF lacks guidance for its requirements related to industry members submitting out-of-business A2K data in accordance with the Gun Control Act, as amended.

Federal internal control standards require that agencies communicate necessary quality information with external parties to achieve agency objectives, which includes providing industry members with record submission guidance so that ATF has the necessary records for firearms tracing.<sup>60</sup> According to ATF officials, ATF has not provided guidance to A2K industry members on how to submit out-of-business records because industry members already have the standard requirements that apply to all FFLs, and industry members have not asked for guidance specific to A2K. Industry members that we spoke to had not contemplated the process for providing A2K equipment and records to ATF because they did not anticipate going out of business. However, if ATF does not have all required out-of-business records, the agency may not be able to locate the first purchaser of a firearm during a trace, and thus may not be

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<sup>60</sup> [GAO/AIMD-00-21.3.1](#) and [GAO-14-704G](#).

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able to fulfill part of its mission. ATF officials agreed that providing such guidance—for example, in the A2K memorandum of understanding between an industry member and A2K—would be helpful to industry members to ensure that records are submitted to ATF as required. Industry members could benefit from clear ATF guidance on, for example, whether they are required to submit their A2K records in electronic format; whether they are allowed to only submit hard copy records; or what to do if one part of the company goes out of business, but A2K continues at the industry member’s remaining FFLs. Such ATF guidance could clarify how industry members may submit A2K data to fulfill a portion of Gun Control Act requirements.

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**FRNP Generally Complies with the Appropriations Act Restriction, but a Past Regional Program Did Not Comply, and ATF Agents Are Able to Access Information That Is Not Permitted by ATF Policy**

FRNP generally complies with the appropriations act restriction and generally adheres to ATF policies that help ensure such compliance. However, a regional ATF program using FRNP from 2007 through 2009 was not in compliance with the appropriations act restriction. ATF deleted the data it collected through this program from FRNP in March 2016. In addition, a technical defect in one of ATF’s key data systems allows ATF agents to access FRNP records in a manner that is inconsistent with ATF policy.

**FRNP Generally Complies with the Appropriations Act Restriction and Adheres to ATF Policies That Help Ensure Compliance**

ATF gathers and combines specific firearms transaction data to a limited degree in FRNP in order to implement its statutory responsibilities related to firearms criminal enforcement and, in this respect, the system complies with the appropriations act restriction. By statute, ATF is responsible for enforcing the federal statutes regarding firearms, including those related to the illegal possession, use, transfer, or trafficking of firearms.<sup>61</sup> FRNP was established to provide an investigative service to ATF agents by maintaining a database of firearms suspected of being involved in criminal activity and associated with an ATF criminal investigation. As discussed earlier, the appropriations act restriction does not preclude all information practices and data systems that involve an element of

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<sup>61</sup> Generally, under 28 U.S.C. § 599A, subject to the direction of the Attorney General, ATF is responsible for investigating (1) criminal and regulatory violations of the federal firearms laws; and (2) any function related to the investigation of violent crime or domestic terrorism that is delegated to ATF by the Attorney General.

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“consolidating or centralizing” FFL records. As designed, the aggregation of firearms transaction records in FRNP is incident to carrying out specific ATF criminal enforcement responsibilities and is limited to that purpose. Therefore, FRNP—when used for the purpose as a database of firearms suspected of being involved in criminal activity and associated with an ATF criminal investigation—complies with the appropriations act restriction.<sup>62</sup> Moreover, based on our analysis of FRNP records, virtually all records in FRNP are associated with an ATF criminal investigation, and thus are related to ATF’s statutory responsibilities.<sup>63</sup>

ATF policies for the implementation of FRNP support the conclusion that it complies with the appropriations act restriction, when operated as designed. ATF policies specify that ATF agents may submit a firearm for entry into FRNP if the firearm is associated with an active, nongeneral ATF criminal investigation and meets certain submission criteria.<sup>64</sup> ATF agents must use a designated submission form when requesting that firearms information be entered in the FRNP system, which, among other things, contains a field for the agent to include an active, nongeneral investigation number. The form also contains a field to indicate the additional, specific submission criteria for the firearm, which align with ATF’s statutory responsibility of enforcing criminal statutes related to the illegal possession, use, transfer, or trafficking of firearms. These criteria include: (1) Large quantities of firearms purchased by individual; (2) Firearms suspected in trafficking, but not stolen from an FFL dealer; (3) FFL dealers suspected of performing firearms transactions without proper documentation; (4) Firearms purchased by suspected straw purchasers;

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<sup>62</sup>With regard to the FOIA restriction on the issuance of certain regulations, we note that there is no regulatory scheme for this system.

<sup>63</sup>Specifically, out of the entire population of 41,625 records reviewed, less than 1/10 of 1 percent of records were not associated at all with an investigation number.

<sup>64</sup>According to ATF officials, general investigation numbers are assigned to an ATF investigation when an ATF agent is examining whether enough evidence exists to open a nongeneral, “active” investigation. In this report, we did not evaluate the method by which ATF opens a criminal investigation or the criteria that must be met in order to open a criminal investigation. In August 2006, NTC implemented a policy of generally not accepting general investigation numbers for FRNP submissions. ATF officials were uncertain whether, prior to August 2006, general investigation numbers were to be accepted. A March 2003 procedures document requested that ATF agents not use general investigation numbers; however, exceptions could be made if the ATF agent submitted a memo explaining why an active investigation number could not be assigned.

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and (5) Other—a category that the submitting agent is to explain on the form.

According to NTC procedures, and verified by our observations, upon receiving an FRNP submission form, an NTC analyst reviews the form for completeness and conducts several validation and verification steps. For example, the analyst uses ATF's case-management system to verify that the investigation number on the FRNP submission form is active and that at least one criterion was selected on the submission form. Once the validation and verification checks are complete, the NTC analyst either enters the firearms information into FRNP or contacts the requesting ATF agent if information is missing or not in alignment with the criteria required for FRNP submission.

During our review of selected fields for all 41,625 FRNP records, and a generalizable sample of records and submission forms, we found that for the vast majority of firearms entered, ATF abided by its policy for entries to be associated with an active investigation. Out of the entire population of 41,625 records reviewed, less than 1/10 of 1 percent of records were not associated at all with an investigation number and, according to ATF officials, were likely data-entry errors or records entered for testing or training purposes.<sup>65</sup> Moreover, based on our sample review, an estimated 96 percent of FRNP records were entered while the related criminal investigation was open.<sup>66</sup> ATF officials stated that most of the remaining records—entered before the related investigation was open or after it was closed—were the result of data-entry errors or the result of investigation

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<sup>65</sup>As further corroboration of FRNP records' association with criminal investigations, based on our sample review, an estimated 99.4 percent of submission forms from November 2004 through July 2015 included an investigation number on the form. Based on our review of general investigation numbers associated with FRNP records between August 2006 and July 2015, the total percentage of FRNP records associated with general investigation numbers was less than 2 percent. ATF officials stated that the records associated with general investigation numbers since August 2006 were likely associated with undercover investigations or investigations led by ATF agents in foreign posts, both of which allow general investigation numbers. Prior to August 2006, about 13 percent of records were associated with general investigation numbers.

<sup>66</sup>These criminal investigations included some general investigations since some general investigation numbers were accepted prior to August 2006.

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numbers being reopened at a later date.<sup>67</sup> Additional, specific submission criteria were required to be noted on the FRNP submission form since November 2004.<sup>68</sup> Based on our sample review, an estimated 97 percent of FRNP submission forms from November 2004 through July 2015 included the selection of at least one criterion. For an estimated 13 percent of these—or 23 submission forms in our sample—the “Other” criteria was selected, and all but 2 of these had an explanation for why the firearms were entered in FRNP.<sup>69</sup> For example, in 1 submission form that contained an explanation for “Other,” business owners were suspected of selling firearms without a license. ATF officials could not definitively state why an estimated 3 percent of submissions from November 2004 through July 2015 did not contain criteria selection. Officials speculated, for example, that an NTC analyst may have obtained the criteria selection from the requesting agent by phone or e-mail and may not have noted his or her conversation in the FRNP file. However, officials acknowledged that the criteria selection is an important quality control and allows ATF the ability to audit records related to an investigation if necessary.

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<sup>67</sup>According to ATF officials, some of the data-entry errors were caused when ATF converted to a new case-management system. However, ATF officials stated that original case files could be consulted for the correct case date ranges.

<sup>68</sup>Since the inception of FRNP in 1991, ATF has periodically changed its procedures for submitting firearms for entry in the system. Prior to June 1997, ATF agents submitted a memorandum requesting that firearms be entered in the FRNP system. In 1997, ATF developed a formal submission form for FRNP submission requests, and the form has been subsequently updated and modified, including in 2003, 2004, and 2006. Earlier iterations of the submission form, such as several of those prior to November 2004, did not include selection options for criteria. Approximately 60 percent of records in the FRNP system were entered prior to November 2004.

<sup>69</sup>Of the submission forms from November 2004 through July 2015 that contained at least one specific submission criterion, an estimated 72 percent (plus or minus 6.7 percentage points) included the selection of “firearms suspected in trafficking, but not stolen from an FFL dealer”; an estimated 61 percent (plus or minus 7.2 percentage points) included the selection of “large quantities of firearms purchaser by individual”; an estimated 61 percent (plus or minus 7.2 percentage points) included the selection of “firearms purchased by suspected straw purchaser”; and an estimated 2 percent (plus or minus 1.9 percentage points) included the selection of “FFL dealers suspected of performing firearms transactions without proper documentation.” The confidence interval for the estimated 13 percent with “Other” selected was plus or minus 5 percentage points.

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A Past ATF Regional Program Did Not Comply with the Appropriations Act Restriction

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ATF officials told us that only names associated with the criminal investigation are entered in the FRNP system.<sup>70</sup> These names are generally limited to suspects and purchasers, but ATF officials acknowledged that the names of victims or witnesses may be included in the system if they are associated with the criminal investigation, though this does not happen routinely.<sup>71</sup> Based on our observations of FRNP entry procedures, an NTC analyst verifies that any names on the submission form match the names listed in the case-management system for that particular investigation, prior to entering the information in the FRNP system.

An ATF regional program conducted from 2007 through 2009 to enter firearms into FRNP—the Southwest Border Secondary Market Weapons of Choice (SWBWOC) Program—did not comply with the appropriations act restriction on consolidating or centralizing FFLs’ firearms records, because the individual firearms were not suspected of being involved in criminal activity associated with an ATF criminal investigation. During the course of our review, ATF reported that it planned to delete the related data from FRNP, and ATF did so in March 2016.

According to ATF officials, the SWBWOC Program was in place in ATF’s four southwest border field divisions in order to more effectively identify—during a trace—the purchasers of used firearms trafficked to Mexico.<sup>72</sup> The program was implemented during routine regulatory inspections of

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<sup>70</sup>As discussed earlier, according to ATF data, as of May 3, 2016, the names of 8,705 unique persons (e.g., criminal suspects, firearms purchasers, associates) were in FRNP, making up 41,964 total FRNP records.

<sup>71</sup>During our review of the FRNP submission forms, we noted a few instances when “associates” were listed and some instances of firearms “possessors”; however, we were unable to determine in FRNP whether the associate or possessor was under investigation, or just associated with the investigation. To determine how each name was affiliated with the FRNP record or submission form would require a review of ATF case-management files associated with the FRNP entry, and therefore was outside the scope of our review.

<sup>72</sup>According to ATF officials, in October 2005, the governments of the United States and Mexico instituted a cooperative effort to address surging drug–cartel driven violence in Mexico and along the southwest border. This effort became known as the Southwest Border Initiative. ATF’s main role in the Southwest Border Initiative was to develop strategies and programs to stem the illegal trafficking of firearms from the United States to Mexico. In June 2007, as part of its overall Southwest Border Initiative strategy, ATF developed an Industry Operations Strategy for its four southwest border field divisions. One aspect of the Industry Operations Strategy was the SWBWOC Program.

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FFLs in the region who were engaged primarily in the sale of used firearms—generally pawnbrokers. According to ATF, used firearms sales, referred to as “secondary market” sales, played a significant role in firearms trafficking to Mexico, particularly certain firearms most sought by the Mexican drug cartels, referred to as “weapons of choice.” According to ATF officials, this program was developed to record certain firearms in an effort to enhance ATF’s ability to trace those firearms to a retail purchaser in the event of crime-related recoveries of the firearms.<sup>73</sup> As part of the program, during regulatory inspections, ATF investigators were to record any specified weapons of choice that were found in the FFLs’ inventory or sold or disposed of by the FFLs within the inspection period. According to ATF officials, the information recorded was limited to the serial number and description of the firearm, and was not to include any purchaser information.<sup>74</sup> The firearms information was then submitted to FRNP for all of the used firearms identified during the inspection. If the firearm was subsequently recovered by law enforcement and submitted for a trace, NTC’s automatic checks on the firearm description would result in a match in the FRNP system. ATF would then be able to more quickly identify the FFL pawn shop that previously had the firearm in its inventory.<sup>75</sup>

According to ATF officials and documentation, the program was cancelled on October 2, 2009, following ATF’s legal review of the process by which the firearms information entered during the program was recorded and submitted to FRNP. ATF’s legal review determined that the program was not consistent with the appropriations act restriction on consolidation or

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<sup>73</sup>A successful firearms trace ends with the identification of the first purchaser of the firearm from a licensed retailer. If, after this first purchase, a firearm is subsequently sold in the secondary market—private sales, gun shows, and used firearms dealers such as pawn shops—the normal ATF tracing process would not identify who sold or purchased the firearm.

<sup>74</sup>Our review of a sample of records in FRNP included seven records from the SWBWOC Program. The submission forms associated with these seven records did not include any purchaser information. Although purchaser information was not to be recorded for the SWBWOC Program, inclusion of these firearms in FRNP made it more likely to be able to identify the most recent retail purchaser during a trace by directing NTC analysts to the retail FFL that presumably last sold the firearm and maintained the transaction record, including information related to the retail purchaser.

<sup>75</sup>According to ATF, approximately 3 percent of firearms—or 373—entered into FRNP as a result of the program were associated with a trace.

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centralization. According to ATF officials, the program was not reviewed by the ATF Chief Counsel's office prior to its initiation in June 2007. They stated that the program's existence was the result of incomplete communication by ATF executives responsible for industry operations programs with ATF's Chief Counsel prior to the implementation of the program. Upon learning of the program, ATF Counsel determined that FFL information on a firearm, in and of itself—even when unaccompanied by purchaser information—is not permitted to be collected and consolidated without a specific basis in statute or regulation, or a direct nexus to a law enforcement purpose, such as a criminal investigation. The ATF Chief Counsel's office advised that the program be immediately terminated and, in October 2009, the program was cancelled and the firearms information already entered into FRNP during the program was marked as "Inactive."<sup>76</sup>

We concur with ATF's assessment that the inclusion of firearms information from the program in FRNP did not comply with the appropriations act restriction. It is our view that information obtained from an FFL about a firearm in and of itself, and unaccompanied by purchaser information, is not permitted to be collected and consolidated within ATF without a specific basis in statute. As a result of our review, ATF officials deleted the records for the affected data from FRNP—855 records relating to 11,693 firearms—in March 2016.

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<sup>76</sup>Information from inactive records is still used to assist with the tracing process.



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ATF Agents Are Able to Access FRNP Information beyond What Is Permitted by ATF Policy

A technical defect in eTrace 4.0 allows ATF agents to view and print FRNP data beyond what ATF policy permits. These data include purchaser names and suspect names in a summary format called a Suspect Gun Summary Report.<sup>77</sup> Any ATF agent with eTrace access can view or print these reports, including up to 500 FRNP records at one time. According to ATF officials, the eTrace defect occurred when the contractor developing eTrace 4.0 included a global print function for Suspect Gun Summary Reports—which can contain retail purchaser information—that was accessible from the search results screen. In December 2008, prior to the release of eTrace 4.0 in 2009, ATF provided the contractor with a list of the new system’s technical issues, including this FRNP printing defect. ATF officials explained that because all ATF eTrace users had the appropriate security clearances, and because there would not be a reason for ATF agents to access the Suspect Gun Summary Reports, the print issue was not considered a high-priority concern. However, ATF officials told us that no audit logs or access listings are available to determine how often ATF agents have accessed records containing purchaser information. Therefore, ATF has no assurance that the purchaser information entered in FRNP and accessible through eTrace is not being improperly accessed.

eTrace is available to federal, state, and local law enforcement entities that have entered into an eTrace memorandum of understanding with ATF. ATF agents have access to information in eTrace that is unavailable to state and local law enforcement entities, such as FRNP data. However, according to eTrace system documentation, ATF agents are to be limited

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<sup>77</sup>FRNP submission forms contain fields to specify information about the purchaser, as well as information about the suspect (if different than the purchaser). However, the FRNP system only contains fields for “individual” instead of suspect and purchaser. Once the names from the submission form are added to the FRNP system as “individuals,” there is no way to distinguish whether the individual is a suspect or purchaser, or both, without referring to the original submission form. Therefore, although FRNP data and Suspect Gun Summary Reports contain individuals’ information, and the individuals can be either suspects or purchasers, or both, it is not possible to distinguish whether the name on the Suspect Gun Summary Report is a suspect or purchaser. ATF maintains a separate way—permitted by ATF policy—to print Suspect Gun Summary Reports. However, printing these reports is limited to certain NTC staff and, less commonly, certain ATF agents assigned to investigative task forces, such as Crime Gun Intelligence Centers, where ATF and other interagency collaborators collect, manage, and analyze crime gun intelligence. ATF maintains a system called the Firearms Information Reporting System to print the allowable Suspect Gun Summary Reports, among other reports that require printing at NTC. See app. II for more information about this system.

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in their access to FRNP records. Specifically, ATF agents should only be able to view the firearm description and the name and contact information of the ATF case agent associated with the investigation, and not purchaser information or FFL information. If an ATF agent wanted further information about the FRNP data, the agent should have to contact the case agent. ATF officials told us that ATF's policy is intended to provide FRNP information to ATF agents on a "need-to-know" basis in order to protect the security of ATF investigations, and protect gun owner information.<sup>78</sup> Moreover, federal internal control standards specify that control activities to limit user access to information technology include restricting authorized users to the applications or functions commensurate with assigned responsibilities.<sup>79</sup>

According to ATF officials, options are limited for resolving the global print function defect. ATF's contract with the eTrace 4.0 developer has ended, and therefore ATF cannot contact the developer to fix the printing issue. ATF could have the issue resolved when a new version of eTrace, version 5.0, is released, but there is no timeline for the rollout of eTrace 5.0. ATF officials told us that, in the short term, one method to fix the printing issue would be to remove individuals' names and identifying information from the FRNP system, so it is not available for Suspect Gun Summary Reports. The firearms information and case agent information would remain available to all ATF agents, and ATF officials indicated that they did not think that removing the identifying information would hamper ATF agents' investigations. Developing and implementing short-term and long-term mechanisms to align the eTrace system capability with existing ATF policy to limit access to purchaser information for ATF agents could ensure that firearms purchaser information remains limited to those with a need to know.

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<sup>78</sup>ATF referred to this as a policy throughout our review, but noted in technical comments to the report that it is a matter of practice and an "operational security preference." We are using the term policy in a broad sense to describe the operations that ATF requires per the systematic processes and procedures stipulated in eTrace system documentation.

<sup>79</sup>[GAO/AIMD-00-21.3.1.](#)

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MS Complies with the Appropriations Act Restriction, but ATF Continues to Inconsistently Adhere to ATF Policy When Deleting Records

Multiple Sales Reports and Demand Letter 3 Reports Maintained in MS Comply with the Appropriations Act Restriction

MS complies with the appropriations act restriction; however, ATF lacks consistency among its MS deletion policy, system design, and policy implementation timing. Since we reported on MS in 1996, ATF has made minimal changes to the system itself, but the information contained in MS has changed with the inclusion of Demand Letter 3 reports, in addition to multiple sales reports.<sup>80</sup>

**Multiple sales reports.** By statute,<sup>81</sup> FFLs are required to provide to ATF a multiple sales report whenever the FFL sells or otherwise disposes of, within any 5 consecutive business days, two or more pistols or revolvers, to an unlicensed person.<sup>82</sup> The reports provide a means of monitoring and deterring illegal interstate commerce in pistols and revolvers by unlicensed persons. ATF's maintenance of multiple sales reports in MS complies with the appropriations act restriction because of ATF's statutory authority related to multiple sales reports, and the lack of significant changes to the maintenance of multiple sales reports in MS since we found it to be in compliance in 1996.

As we reported in 1996, ATF operates MS with specific statutory authority to collect multiple sales reports. In 1975, under the authority of the Gun Control Act of 1968, ATF first issued regulations requiring FFLs to prepare multiple sales reports and submit those reports to ATF. The legislative history related to ATF's fiscal year 1979 appropriations act restriction did not provide any indication that Congress intended a change in ATF's existing practice. In 1986, a provision of FOPA codified FFLs'

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<sup>80</sup>GAO/GGD-96-174. In September 1996, we reported that MS (which did not include Demand Letter 3 reports at the time), as designed, complied with the statutory data restrictions and that ATF operated the system consistently with its design, with one exception related to the system's deletion requirement. ATF subsequently informed us that it had taken action to correct this. Changes to the system since then include adding optional fields to identify purchaser country of birth and multiple sales occurring at gun shows.

<sup>81</sup>18 U.S.C. § 923(g)(3)(A). There is also an implementing regulation at 27 C.F.R. § 478.126a. Since the passage of FOPA, there have been only technical administrative changes to this regulation.

<sup>82</sup>An "unlicensed person" is an individual who does not have a license pursuant to the Gun Control Act of 1968, as amended. FFLs are not required to prepare multiple sales reports for sales between FFLs, which are licensed.

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regulatory reporting requirement, affirming ATF's authority to collect multiple sales reports.<sup>83</sup> In addition, this provision required, among other things, FFLs to forward multiple sales reports to the office specified by ATF. Therefore, under this provision, ATF was given the statutory authority to specify that FFLs forward multiple sales reports to a central location. In our 1996 report, we examined MS and found that it did not violate the prohibition on the consolidation or centralization of firearms records because ATF's collection and maintenance of records was incident to its specific statutory responsibility. As we noted at that time, multiple sales reports are retrievable by firearms and purchaser information, such as serial number and purchaser name. We did not identify any significant changes to the maintenance of the multiple sales reports since we last reported on ATF's compliance with the statutory restriction that would support a different conclusion in connection with this review.<sup>84</sup>

**Demand Letter 3 reports.** In 2011, in an effort to reduce gun trafficking from the United States to Mexico, ATF issued demand letters to FFLs classified as dealers or pawnbrokers in four southwest border states: Arizona, California, New Mexico, and Texas. The letter, referred to as Demand Letter 3, required these FFLs to submit a report to ATF on the sale or other disposition of two or more of a specific type of semiautomatic rifle, at one time or during any 5 consecutive business days, to an unlicensed person.<sup>85</sup> Federal courts that have considered the issue have held that ATF's collection of Demand Letter 3 reports are consistent with the appropriations act restriction. It is our view that ATF's maintenance of Demand Letter 3 reports in MS is consistent with the appropriations act restriction in light of the statutory basis for Demand Letter 3, the courts' decisions, and the way in which the records are maintained.

ATF has specific statutory authority to collect reports like Demand Letter 3 reports. As discussed, FFLs are required to maintain certain firearms

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<sup>83</sup>Pub. L. No. 99-308, § 103, 100 Stat. 449, 453-456 (1986).

<sup>84</sup>Changes to the system since our 1996 report include adding optional fields to identify purchaser country of birth and multiple sales occurring at gun shows.

<sup>85</sup>The specific type of semiautomatic rifle is one that is capable of accepting a detachable magazine and with a caliber greater than .22.

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records at their places of business.<sup>86</sup> By statute, FFLs may be issued letters requiring them to provide their record information or any portion of information required to be maintained by the Gun Control Act of 1968, as amended, for periods and at times specified by the letter.<sup>87</sup>

Some FFLs have challenged the legality of Demand Letter 3 reports for a number of reasons, including that it did not comply with the appropriations act restriction. Federal courts that have considered the issue have upheld ATF's use of Demand Letter 3 as consistent with the appropriations act restriction. In one case before the U.S. Court of Appeals for the Tenth Circuit,<sup>88</sup> the FFL contended that the demand letter created a national firearms registry in violation of the restriction on consolidation or centralization.<sup>89</sup> The Tenth Circuit stated that the plain meaning of "consolidating or centralizing" does not prohibit the mere collection of some limited information. The court went on to state that the July 2011 demand letter requested very specific information from a limited segment of FFLs. In addition, the court pointed out that Congress authorized the issuance of the letters in 1986, after passing the first appropriations act restriction, and Congress could not have intended to authorize the record collection in statute while simultaneously prohibiting it in ATF's annual appropriations act. In other similar cases, the courts have also held that ATF had the authority to issue the demand letter and that ATF's issuance of the demand letter complied with the appropriations act restriction.<sup>90</sup> In addition, Demand Letter 3 reports are maintained in MS in an identical manner to multiple sales reports.

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<sup>86</sup>18 U.S.C. 923 (g)(1)(A).

<sup>87</sup>18 U.S.C. 923 (g)(5)(A). The provision provides, "Each licensee shall, when required by letter issued by the Attorney General, and until notified to the contrary in writing by the Attorney General, submit on a form specified by the Attorney General, for periods and at the times specified in such letter, all record information required to be kept by this chapter [Chapter 44 (Firearms) of Title 18 of the United States Code] or such lesser record information as the Attorney General in such letter may specify."

<sup>88</sup>Ron Peterson Firearms, LLC v. Jones, 760 F.3d 1147 (10th Cir. 2014).

<sup>89</sup>The act stated "[t]hat no funds appropriated herein or hereafter shall be available for salaries or administrative expenses in connection with consolidating or centralizing, within the Department of Justice, the records, or any portion thereof, of acquisition and disposition of firearms maintained by Federal firearms licensees."

<sup>90</sup>See 10 Ring Precision v. Jones, 722 F.3d 711 (5th Cir. 2013); Nat'l Shooting Sports Found., Inc. v. Jones, 716 F.3d 200 (D.C. Cir. 2013).

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ATF's Long-Standing Struggle  
to Implement Its MS Deletion  
Policy Persists

Although not required by statute, ATF policy requires that firearms purchaser names be deleted from MS 2 years after the date of the reports, if the firearm has not been connected to a firearms trace.<sup>91</sup> However, ATF's method to identify records for deletion is not comprehensive and, therefore, 10,041 names that should have been deleted remained in MS until May 2016.<sup>92</sup> According to ATF officials, because of MS system design limitations, analysts must write complex queries to locate such names in MS. For example, since the information needed to identify the correct records could exist in free-form fields, the success of the queries in comprehensively identifying all appropriate records depends on consistent data entry of several text phrases throughout the history of the system. In addition, ATF's queries have inconsistently aligned with its system design—for instance, as the system was modified and updated, the query text remained aligned with the outdated system—and therefore these queries resulted in incomplete identification of records to be deleted. Changes to MS to address system query limitations would require a system-wide database enhancement, but there is currently not an operations and maintenance support contract in place for this system.

Moreover, even if the system could ensure that deletions capture all required records, ATF has inconsistently adhered to the timetable of deletions required by its policy. For example, according to ATF's deletion log and our verification of the log, some records entered in 1997 were not deleted until November 2009—about 10 years after the required 2

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<sup>91</sup>According to ATF officials, ATF's policy is designed to balance the law enforcement need to retain and access multiple sale information that may be relevant to criminal investigations with the privacy interests of firearms purchasers. ATF reported that, during the course of our review, it modified its deletion procedures to identify records to delete based on report date, in order to ensure strict alignment with ATF's deletion policy. Previously, ATF identified records to delete based on the date of entry in MS, which in most instances is within 24 hours of the date of the report, according to ATF.

<sup>92</sup>At our request, an NTC data analyst queried MS to identify records (1) not associated with a trace, (2) entered prior to January 2009—a period for which NTC did delete data, and (3) did not have the purchaser name replaced with the text "PURGED"—ATF's mechanism for deleting the records. This search resulted in identifying records from every year from 1995 through 2008—ranging from 21 records to 5,878 records in a given year—that should have been deleted but were not. The total number of records was 10,041 of 1,509,054 records—or less than 1 percent—entered through December 2008 that NTC should have deleted but still maintained with purchaser names in MS until May 2016. The vast majority of these records were from 1996 and 1997.

years.<sup>93</sup> As shown in table 1 below, ATF’s timing for implementing deletions did not adhere to ATF policy directives.

As shown in table 1 below, the ATF deletion policy for MS has changed over time including variations in the frequency of deletions (e.g., annually, monthly, weekly), and pauses to the deletion policy because of, according to ATF officials, litigation and requests from Congress. According to NTC officials, delayed deletions occurred because deleting a large number of records at once negatively affects the system, slowing system response time or stopping entirely the larger related data system.<sup>94</sup> However, according to NTC’s deletion log and verified by our observations of NTC system queries, deletions were conducted in average increments of almost 100,000 records per day—representing on average a full year’s worth of records to be deleted. In addition, ATF confirmed that a single deletion of 290,942 records on one day in January 2011 did not affect the system. Therefore, system constraints do not seem to be the reason for the delayed deletion. ATF did not identify further causes for the delays in deletions.

**Table 1: Multiple Sales (MS) Deletion Policy Requirement Implementation and Timing**

MS deletion policy requires deleting firearms purchaser names over 2 years old and not linked to firearms traces. GAO tested the system for undeleted names and reviewed the deletion log where Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) analysts recorded deletions.

Deletion Policy Requirement <sup>a</sup>	Year of Entry of MS Record <sup>b</sup>	Applicable names remaining undeleted, as of October 2015	Applicable names deleted, based on deletion log	Timeliness of deletions, based on deletion log
Begin deleting names from records (effective November 1995– December 1999), on weekly basis starting July 1996 <sup>c</sup>	1995–1996	3,793	n/a <sup>d</sup>	n/a <sup>d</sup>
	1997	5878	1855	9 years and 11 months late

<sup>93</sup>Based on NTC queries that we observed, we verified that, of the records logged as deleted on five different dates, more than 99 percent had been deleted. We therefore determined that the dates on which ATF personnel actually deleted purchaser names from MS, and the number of records actually deleted, generally matched the dates and number of deleted records on the log.

<sup>94</sup>The larger related data system is the Firearms Tracing System, which contains MS data. See app. II for more details.

Pause deletions due to litigation (effective January 2000–October 2009) <sup>e</sup>	1998–2007	No deletions conducted because of pause in deletion policy		
<b>Deletion Policy Requirement<sup>a</sup></b>	<b>Year of Entry of MS Record<sup>b</sup></b>	<b>Applicable names remaining undeleted, as of October 2015</b>	<b>Applicable names deleted, based on deletion log</b>	<b>Timeliness of deletions, based on deletion log</b>
Delete names from records all at once (onetime deletion directed in November 2009)	1998–2001	101	352,416	On time
	2002–Part of 2005	118	347,076	2 months late
	Part of 2005–Part of 2006	45	50,357	6 months late
	Part of 2006–2007	43	261,282	14 months late
Delete names from records on fiscal year basis (effective November 2009–December 2010)	2008	63	183,604	3 months late for records entered from November 2007 through September 2008
Delete names from records on monthly basis (effective January 2011)	No data	No data	No data	In accordance with policy for records entered from October 2008 through December 2008
Pause deletions due to requests from Congress (effective February 2011–present) <sup>e</sup>	2009–2014	No deletions conducted because of pause in deletion policy		

Source: GAO analysis of ATF information. | GAO-16-552.

<sup>a</sup>Policy requirements listed in this timeline apply generally to the year of entry of MS record indicated; policies may apply up to several months before or after the indicated year of entry.

<sup>b</sup>Because of a lack of precision in ATF’s deletion log, we could not determine whether deletions covering partial years corresponded to the beginning or later parts of the years, nor which portion of the year included the undeleted records. Thus, the years of entry and number of deleted names are listed in the order shown on ATF’s deletion log, and the number of undeleted names is included in the first mention of the applicable year. Because ATF created MS in 1995, multiple sales reported in 1995 and prior are all included in the “1995” year of entry of MS record.

<sup>c</sup>We were not able to determine the policy for frequency of deletions (e.g., weekly) from November 1995 through June 1996.

<sup>d</sup>n/a means not available. We reviewed the ATF deletion log, which covered records entered in 1997 through 2008. The deletion logs did not include records entered before 1997, and we did not validate the timing of these deletions in the system.

<sup>e</sup>According to ATF, ATF suspended implementation of its deletion policy because of litigation (affecting records entered from January 1998 through October 2007) and requests from Congress (affecting records entered from January 2009 through 2014 and on an ongoing basis). ATF officials could not be certain of when the deletion pause for litigation began, but they believe that it likely started in or before June 2000. We therefore selected January 2000 as the start date of the pause to the deletion policy for this table. We did not independently verify the basis for suspending deletions related to litigation.

ATF reported that the objective for its deletion policy was primarily to delete data that may not be useful because of its age and to safeguard privacy concerns related to retaining firearms purchaser data. Federal



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internal control standards require control activities to help ensure that management's directives are carried out.<sup>95</sup> Additionally, information systems and related control activities should be designed to achieve objectives and respond to risks.<sup>96</sup> Specifically, an organization's information system should be designed by considering the processes for which the information system will be used. For example, to alleviate the risk of not meeting the objectives established through the MS deletion policy, ATF must ensure the policy is consistent with the design of the MS data system and ATF must ensure that it meets the policy's timeline requirements. In September 1996, we reported that ATF had not fully implemented its 2-year deletion requirement.<sup>97</sup> During the course of our 1996 review, ATF provided documentation that it had subsequently deleted the required records and that it would conduct weekly deletions in the future. Similarly, as a result of our current review, according to ATF documentation, in May 2016, the agency deleted the 10,041 records that should have been deleted earlier.<sup>98</sup> However, given that this has been a 20-year issue, it is critical that ATF develop consistency between its deletion policy, the design of the MS system, and the timeliness with which deletions are carried out. By aligning the MS system design and the timeliness of deletion practices with its policy, ATF could ensure that it maintains only useful purchaser information while safeguarding the privacy of firearms purchasers.

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## Conclusions

ATF has an important role in combatting the illegal use of firearms, and must balance this with protecting the privacy rights of law-abiding firearms owners. Of the four ATF firearms data systems we reviewed that contained firearms purchaser information, we found that certain aspects of two of these systems violated the appropriations act restriction on consolidating or centralizing FFL firearms records, but ATF resolved these issues during the course of our review. With regard to ATF policies on maintenance of firearms records, ATF should do more to ensure that

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<sup>95</sup>[GAO/AIMD-00-21.3.1.](#)

<sup>96</sup>[GAO-14-704G.](#)

<sup>97</sup>[GAO/GGD-96-174.](#)

<sup>98</sup>At the time of the May 2016 deletion, the NTC analyst identified and deleted 10,044 records that should have been deleted earlier—3 more records than we identified during our review.

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these policies are followed and that they are clearly communicated. Specifically, providing guidance to industry members participating in A2K for how to submit their records when they go out of business would help ensure they submit required records to ATF. Without this clear guidance, ATF risks not being able to locate the first purchaser of a firearm during a trace, and thus may not be able to fulfill part of its mission. In addition, aligning eTrace system capability with ATF policy to limit access to firearms purchaser information in FRNP would ensure that such information is only provided to those with a need to know. Finally, aligning the MS system design and the timeliness of deletion practices with the MS deletion policy would help ATF maintain only useful purchaser data and safeguard the privacy of firearms purchasers.

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## Recommendations for Executive Action

In order to help ensure that ATF adheres to its policies and facilitates industry compliance with requirements, we recommend that the Deputy Director of ATF take the following three actions:

- provide guidance to FFLs participating in A2K for provision of out-of-business records to ATF, so that FFLs can better ensure that they are in compliance with statutory and regulatory requirements;
- develop and implement short-term and long-term mechanisms to align the eTrace system capability with existing ATF policy to limit access to FRNP purchaser information for ATF agents; and
- align the MS deletion policy, MS system design, and the timeliness of deletion practices to improve ATF's compliance with the policy.

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## Agency Comments and Our Evaluation

We provided a draft of this report to ATF and DOJ on May 25, 2016 for review and comment. On June 16, 2016, ATF provided an email response, stating that the agency concurs with all three of our recommendations and is taking several actions to address them.

ATF concurred with our recommendation that ATF provide guidance to FFLs participating in A2K for provision of out-of-business records to ATF. ATF stated that the agency is modifying its standard Memorandum of Understanding with A2K participants to incorporate specific guidance regarding the procedures to be followed when a participant goes out of business. ATF also stated that, as a condition of participation, all current and future A2K participants will be required to adopt the revised Memorandum of Understanding. The implementation of such guidance in

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the Memorandum of Understanding for A2K participants should meet the intent of our recommendation.

ATF concurred with our recommendation that ATF develop and implement mechanisms to align the eTrace system capability with existing ATF policy to limit access to FRNP purchaser information for ATF agents. ATF stated that, in the short term, the agency will delete all purchaser information associated with a firearm entered into FRNP, and will no longer enter any purchaser information into FRNP. ATF stated that, in the long term, the agency will modify the Firearms Tracing System to remove the purchaser information fields from the FRNP module, and will modify eTrace as necessary to reflect this change. These short- and long-term plans, if fully implemented, should meet the intent of our recommendation.

ATF concurred with our recommendation that ATF align the MS deletion policy, MS system design, and the timeliness of deletion practices to improve ATF's compliance with the policy. As we reported above, ATF stated that the agency deleted all purchaser names from MS that should have been deleted earlier. ATF also stated that the agency is implementing protocols to ensure that deleting purchaser names from MS aligns with ATF policy. If such protocols can be consistently implemented in future years, and address both the timeliness of deletions and the comprehensive identification of records for deletion, they should meet the intent of our recommendation.

On June 22, 2016, DOJ requested additional time for its Justice Management Division to review our conclusions regarding ATF's compliance with the appropriations act restriction and the Antideficiency Act. As noted earlier, we solicited ATF's interpretation of the restriction on consolidation or centralization of records as applied to each of the systems under review by letter of December 21, 2015, consistent with our standard procedures for the preparation of legal opinions.<sup>99</sup> ATF responded to our inquiry on January 27, 2016, and its views are reflected in the report. Nevertheless, DOJ stated that ATF and DOJ officials had not followed DOJ's own processes regarding potential violations of the

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<sup>99</sup>GAO, *Procedures and Practices for Legal Decisions and Opinions*, [GAO-06-1064SP](#) (Washington, D.C.: Sept. 5, 2006).

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Antideficiency Act, specifically promptly informing the Assistant Attorney General for Administration. As a result, DOJ requested additional time to review the appropriations law issues raised by the draft report.

As explained in appendix VII, ATF's failure to comply with the prohibition on the consolidation or centralization of firearms records violated the Antideficiency Act, which requires the agency head to submit a report to the President, Congress, and the Comptroller General.<sup>100</sup> The Office of Management and Budget (OMB) has published requirements for executive agencies for reporting Antideficiency Act violations in Circular A-11, and has advised executive agencies to report violations found by GAO.<sup>101</sup> OMB has further advised that "[i]f the agency does not agree that a violation has occurred, the report to the President, Congress, and the Comptroller General will explain the agency's position."<sup>102</sup> We believe that the process set forth by OMB affords DOJ the opportunity to consider and express its views.<sup>103</sup>

ATF also provided us written technical comments, which we incorporated as appropriate.

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As agreed with your offices, unless you publicly announce the contents of this report earlier, we plan no further distribution until 30 days from the report date. At that time, we will send copies to the Deputy Director of ATF, the Attorney General of the United States, and other interested parties. In addition, the report will be available at no charge on the GAO website at <http://www.gao.gov>.

If you or your staff have any questions about this report, please contact Diana C. Maurer at (202) 512-9627 or [maurerd@gao.gov](mailto:maurerd@gao.gov), or Helen T. Desaulniers at (202) 512-4740 or [desaulniersh@gao.gov](mailto:desaulniersh@gao.gov). Contact points for our Offices of Congressional Relations and Public Affairs may be

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<sup>100</sup>31 U.S.C. § 1351.

<sup>101</sup>OMB, *Preparation, Submission, and Execution of the Budget*, [OMB Circular No. A-11](#), §§ 145, 145.8 (Washington, D.C.: June 2015).

<sup>102</sup>*Id.*

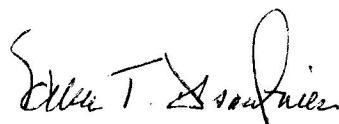
<sup>103</sup>DOJ officials told us that they are initiating the OMB process.

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found on the last page of this report. GAO staff who made key contributions to this report are listed in appendix VIII.



Diana C. Maurer  
Director  
Homeland Security and Justice Issues



Helen T. Desaulniers  
Managing Associate General Counsel  
Office of the General Counsel

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# Appendix I: Objectives, Scope, and Methodology

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This report addresses the following objectives:

1. Identify the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) data systems that contain retail firearms purchaser data and describe the characteristics of selected systems.
2. Determine whether selected ATF data systems comply with the appropriations act restriction on consolidation or centralization of firearms records and ATF policies.

To calculate the estimated number of firearms in the United States in 2013, we used data from ATF's February 2000 report on Commerce in Firearms in the United States and ATF's 2015 Annual Statistical Update to this report.<sup>1</sup> To calculate the approximate number of murders in which

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<sup>1</sup>Department of the Treasury, Bureau of Alcohol, Tobacco & Firearms, *Commerce in Firearms in the United States* (Washington, D.C.: Feb. 2, 2000). United States Department of Justice, Bureau of Alcohol, Tobacco, Firearms and Explosives, *Firearms Commerce in the United States: Annual Statistical Update 2015* (Washington, D.C.: 2015). We used the firearms manufacturing, export, and import data from 1899 through 1985 from the report, and from 1986 through 2013 from the update. We added the total handguns (including pistols and revolvers), rifles, and shotguns that were manufactured; subtracted the total that were exported; and added the total that were imported. We rounded the total down to the nearest 10 million to obtain an estimated number. Including miscellaneous firearms—a category that includes pistol grip firearms, starter guns, and firearms frames and receivers—did not change our final estimate, so our estimate applies to a total with or without miscellaneous firearms. ATF officials stated that this methodology is an appropriate use of the agency's data, noting that the data are based, in part, on information reported by manufacturers, some of whom do not report their data in a timely manner, if at all, and that the data are only as accurate as the information provided by these federal firearms licensees (FFL).

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firearms were involved in 2014, we used data from the Federal Bureau of Investigation's Uniform Crime Reports from 2014.<sup>2</sup>

To address the first objective, we reviewed ATF policy and program documents to identify ATF data systems related to firearms. For the purposes of this report, "data systems" or "systems" refers to ATF's data systems and system components, including what ATF refers to as "modules" of a larger system, and what ATF refers to as "programs" whose associated data are contained within related systems. These policy and program documents included, among other things, ATF orders, system descriptions, system user manuals, system training materials, and data submission forms. We compared this information to the systems identified in our September 1996 report, and conducted searches of publicly available information to develop a comprehensive and current list of systems.<sup>3</sup> In order to identify the systems and better understand them and their contents, we spoke with ATF officials in headquarters and at ATF's National Tracing Center (NTC). We also discussed these systems with ATF investigative and regulatory officials in the Baltimore and Los Angeles field offices, who provided varying perspectives due to geographic factors. These actions enabled us to confirm a comprehensive list of systems, and determine the presence of retail purchaser information within these systems.

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<sup>2</sup>Federal Bureau of Investigation, *Uniform Crime Reports: 2014 Crime in the United States*, accessed April 20, 2016, <https://www.fbi.gov/about-us/cjis/ucr/crime-in-the-u.s/2014/crime-in-the-u.s.-2014>. We used the Expanded Homicide Data Table 8 to determine the number of murder victims in 2014 by firearms from the total number of murder victims by known methods. We added to this an estimate of the number of murder victims by unknown methods that were likely by firearms. To do this, we determined the number of murder victims by unknown methods by using the Crime in the United States Table 1 to determine the total number of murder victims in 2014 and subtracting from this the total number of murder victims by firearms. We applied the percentage of murders with known methods that were by firearms to the number of murder victims by unknown methods. After summing the number of murder victims by firearms with the number of murder victims by unknown methods that were likely firearms, we rounded to the nearest 1,000. Because the 2014 Uniform Crime Reports data will be updated and finalized when the 2015 data are issued, we calculated the likely changes to the data based on previous years' changes, and determined that the maximum and minimum likely changes would not result in a change to our estimated figure. Federal Bureau of Investigation officials stated that this methodology is an appropriate use of the agency's data.

<sup>3</sup>GAO, *Federal Firearms Licensee Data: ATF's Compliance with Statutory Restrictions*, GAO/IGD-96-174 (Washington, D.C.: Sept. 11, 1996).

We selected four systems for a more in-depth review: Out-of-Business Records Imaging System (OBRIS), Access 2000 (A2K), Firearm Recovery Notification Program (FRNP), and Multiple Sales (MS).<sup>4</sup> Selected systems, at a minimum, contained retail purchaser information and contained original records—as opposed to systems that transmitted information, such as a system that only pulls data from another system in order to print a report or fill out a form. A system was more likely to be selected if (1) it contained data unrelated to a criminal investigation,<sup>5</sup> (2) a large percentage of system records contained retail purchaser information, (3) the retail purchaser information was searchable, or (4) ATF initiated the system—as opposed to ATF being statutorily required to maintain the system. See table 2 for more details.

**Table 2: Selected Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) Firearms-Related Data Systems and Their Selection Criteria Based on System Design**

	Designed to contain any retail purchaser information	Designed to contain original records	Designed to contain data unrelated to a criminal investigation	Designed for a large percentage of records in the system to contain retail purchaser information	Designed to contain retail purchaser information that is searchable	ATF initiated the system
Out-of-Business Records Imaging System	Yes	Yes	Yes	Yes	No	No
Access 2000	Yes	Yes	Yes	No	No	Yes
Firearm Recovery Notification Program	Yes	Yes	No	Yes	Yes	Yes
Multiple Sales	Yes	Yes	Yes	Yes	Yes	No

Source: GAO analysis of ATF information. | GAO-16-552.

For the selected systems, we reviewed ATF data on the number of system records, among other things—for OBRIS and A2K for fiscal year 2015, and for FRNP and MS from fiscal years 2010 through 2015. We

<sup>4</sup>For the purposes of this report, “data systems” or “systems” refers to ATF’s data systems and system components, including what ATF refers to as “modules” of a larger system, and what ATF refers to as “programs” whose associated data are contained within related systems.

<sup>5</sup>In this report, we did not evaluate the method by which ATF opens a criminal investigation or the criteria which must be met in order to open a criminal investigation.



assessed the reliability of these data by interviewing ATF staff responsible for managing the data and reviewing relevant documentation, and concluded that these data were sufficiently reliable for the purposes of our report. We reviewed ATF policy and program documents to obtain in-depth descriptions of these selected systems, and discussed these systems with ATF officials. We visited NTC to observe the selected systems in operation.

To address the second objective, we reviewed relevant laws, including statutory data restrictions, and ATF policy and program documents relating to ATF's firearms tracing operations and the selected systems. We also solicited the agency's interpretation of the restriction on consolidation or centralization of records as applied to each of the systems, and interviewed ATF officials regarding the data systems' compliance with that restriction and ATF policies. We visited NTC to observe how selected systems' data are collected, used, and stored. For OBRIS, A2K, FRNP, and MS, we observed NTC analysts using the systems during firearms traces and observed the extent to which the systems are searchable for retail purchaser information. For OBRIS, FRNP, and MS, we observed NTC analysts receiving and entering data into the systems and processing the original data submissions—either electronically or through scanning and saving documents—including quality-control checks.

For A2K, we reviewed budgetary information to determine the source of funding for the system for fiscal year 2008 through fiscal year 2014. We also interviewed representatives from the contractor that manages A2K, and 3 of 35 industry members that use A2K, to better understand how the system functions. We selected industry members that had several years of experience using A2K and reflected variation in federal firearms licensee (FFL) size and type. Although our interviews with these industry members are not generalizable, they provided us with insight on the firearms industry's use of A2K.

In order to evaluate the contents of FRNP for the presence of retail purchaser information and compliance with the appropriations act restriction and FRNP policies, we reviewed several fields of data for the entire population of records. During our site visit, we also reviewed additional fields of data for a generalizable sample of records and the associated submission forms that are used to populate the records.

For this sample, we compared selected data in the system to information on the forms, and collected information from the forms. We drew a

stratified random probability sample of 434 records from a total population of 41,625 FRNP records entered from June 1991 through July 2015. With this probability sample, each member of the study population had a nonzero probability of being included, and that probability could be computed for any member. We stratified the population by active/inactive record status and new/old (based on a cutoff of Nov. 1, 2004).<sup>6</sup> Each sample element was subsequently weighted in the analysis to account statistically for all the records, including those that were not selected. Because we followed a probability procedure based on random selections, our sample is only one of a large number of samples that we might have drawn. Since each sample could have provided different estimates, we express our confidence in the precision of our particular sample's results as a 95 percent confidence interval. This is the interval that would contain the actual population value for 95 percent of the samples we could have drawn. All percentage estimates from the review of the generalizable sample of FRNP records have margins of error at the 95 percent confidence level of plus or minus 5 percentage points or less, unless otherwise noted.

For our review of the submission forms associated with FRNP records, we reviewed 195 forms entered into FRNP from November 2004 through July 2015 that were sampled from the "new" stratum. Prior to November 2004, the submission forms did not include selection options for criteria for entry into FRNP. We therefore only reviewed the more recent forms in order to assess the presence of criteria on these forms. Our review of these forms is generalizable to submission forms entered into FRNP from November 2004 through July 2015. All percentage estimates from the review of submission forms have margins of error at the 95 percent confidence level of plus or minus 3 percentage points or less, unless otherwise noted.

We assessed the reliability of the FRNP data by conducting electronic tests of the data for obvious errors and anomalies, interviewing staff

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<sup>6</sup>Active/inactive refers to a record's status in FRNP; an FRNP record is made inactive when the related ATF investigation is closed. New/old refers to the age of the record. For the purposes of this report, a record was considered to be new if it had an entry date of November 1, 2004 or later; a record was considered to be old if it had an entry date prior to November 1, 2004. We selected this cutoff date because of changes to the FRNP submission forms since November 2004.

responsible for managing the data, and reviewing relevant documentation, and concluded that these data were sufficiently reliable for the purposes of our report. For MS, we observed the process of querying to identify particular records.<sup>7</sup>

We determined the selected data systems' compliance with the appropriations act restriction, and compared them to multiple ATF policies on collection and maintenance of information, and criteria in *Standards for Internal Control in the Federal Government* related to control activities for communication and for the access to and design of information systems.<sup>8</sup>

We conducted this performance audit from January 2015 to June 2016 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

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<sup>7</sup>To verify ATF's spreadsheet-based deletion log for MS records that had been deleted—which contains dates and the total number of records deleted—we requested that an NTC data analyst query MS records that were deleted on five separate dates. We then compared the results of the query to the data in the deletion log. We reduced the difference in the results by the number of records that had likely been repopulated as the result of a trace. (The purchaser name is repopulated in cases where deleted records are subsequently matched with firearms traces.)

<sup>8</sup>See GAO, *Standards for Internal Control in the Federal Government*, [GAO/AIMD-00-21.3.1](#) (Washington, D.C.: Nov. 1, 1999), and *Standards for Internal Control in the Federal Government*, [GAO-14-704G](#) (Washington, D.C.: Sept. 10, 2014).

# Appendix II: Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) Firearms-Related Data Systems

**Table 3: Selected Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) Firearms-Related Data Systems that Contain Retail Firearms Purchaser Information**

Data system	Purpose	Responsible ATF branch	Data sources	Contents related to firearms purchaser information	Number of records	Who can view the information	Imports information from	Exports information to
Access 2000 (A2K)	Stores the electronic disposition records of participating industry members (limited to manufacturers, importers, and distributors, and not retail dealers) to allow National Tracing Center (NTC) personnel to search—during a gun trace—via secure web portal by exact firearm serial number and obtain firearms disposition data	NTC	Participating industry members upload data to ATF-owned servers or, in some cases, private servers using ATF software	Electronic disposition records, including firearms information (e.g., serial number, model), name and address to which firearm was shipped, and transaction date	252,433,229, representing the same number of firearms <sup>a</sup>	44 authorized NTC employees and contractors (searching by exact serial number only)	Closed system with no direct link to any other ATF system	Closed system with no direct link to any other ATF system
Firearm Recovery Notification Program (FRNP)	Collects information on firearms associated with an ATF criminal investigation that have not yet been recovered by law enforcement. <sup>b</sup> The system allows NTC to notify requesting ATF agents if such firearms are recovered and traced.	NTC	ATF agents send data to NTC on FRNP submission form (ATF Form 3317.1)	Firearms information (e.g., serial number, model), request information (e.g., requestor's name, contact information), suspect and retail purchaser information (e.g., name, date of birth), federal firearms licensee (FFL) information (e.g., FFL name, FFL number)	41,879, representing 183,015 firearms <sup>c</sup>	About 396 Firearms Tracing System users, primarily NTC personnel, and the 3,050 ATF users, which includes ATF agents. ATF eTrace users outside of NTC are generally to be limited to viewing firearms and requesting agent information.	Firearms Licensing System	eTrace; Firearms Information Reporting System (FIRES); Firearms Tracing System (FTS) (Data related to FRNP are contained in FTS.)

Appendix II: Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) Firearms-Related Data Systems

Data system	Purpose	Responsible ATF branch	Data sources	Contents related to firearms purchaser information	Number of records	Who can view the information	Imports information from	Exports information to
Multiple Sales (MS)	Collects and tracks data on retail purchasers of two or more pistols or revolvers, or both, and two or more of certain rifles—in Arizona, California, New Mexico, and Texas—at one time or during any 5 consecutive business days for regulatory and criminal enforcement	NTC	FFLs send reports to NTC on a specified form (ATF Form 3310.4)	Firearms information (e.g., serial number, model), retail purchaser information (e.g., name, date of birth); FFL information (e.g., FFL name, FFL number)	3,545,942, representing 8,261,816 firearms <sup>c</sup>	About 396 ATF Firearms Tracing System (FTS) users, primarily NTC personnel, and the 3,050 ATF users, which includes ATF agents. ATF eTrace users outside of NTC are generally to be limited to viewing firearms and requesting agent information.	Firearms Licensing System	eTrace; FIRES; FTS (Data related to MS are contained in FTS.)
Out-of-Business Records Imaging System (OBRIS)	Collects, indexes, and retrieves digital copies of firearms transaction records—for regulatory and criminal enforcement—of FFLs that have permanently gone out of business	NTC	Out-of-business FFLs send firearms transaction records to NTC, specifically acquisition and disposition logbooks and a specified form (ATF Form 4473)	Firearms information (e.g., serial number, model), retail purchaser information (e.g., name, date of birth); FFL information (e.g., FFL name, FFL number) stored as non-searchable photographic images <sup>d</sup>	284,324,693 images <sup>e</sup>	About 376 ATF users, including 281 NTC employees and contractors, have complete access to the system, and 95 ATF users outside NTC	Closed system with no direct link to any other ATF system	Closed system with no direct link to any other ATF system

Source: GAO analysis of ATF data. | GAO-16-552

<sup>a</sup>Each record represents one firearm as of October 2, 2015.

<sup>b</sup>FRNP contained 855 records, relating to 11,693 firearms, not associated with an ATF criminal investigation, which ATF deleted in March 2016. For more information on these records, see earlier in this report.

<sup>c</sup>Each record represents one or more firearms as of September 30, 2015.

<sup>d</sup>For the purposes of this report, nonsearchable means that the document is not searchable through character recognition using text queries.

<sup>e</sup>There were 284,324,693 images as of September 30, 2015. ATF does not know how many firearms are represented by these OBRIS images since one image or multiple images can represent one or more firearms.

**Table 4: Other Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) Firearms-Related Data Systems That Contain Retail Firearms Purchaser Information**

Data system	Purpose, as designed	Responsible ATF branch	Contents related to firearms purchaser information <sup>a</sup>	Who can view the information	Imports information from	Exports information to
ATF National Instant Criminal Background Check System (NICS) Referral <sup>b</sup>	Contains information on purchasers that attempted to acquire a firearm and did not pass the NICS check	Denial Enforcement and NICS Intelligence Branch	Retail purchaser information of prohibited individuals who attempted to purchase a firearm (e.g., name); firearms information (e.g., serial number, model)	ATF employees	Federal Licensing System (FLS)	NFORCE
eTrace	Allows law enforcement agency users to submit firearms trace requests, search and view trace results, and run analytical reports on trace data	National Tracing Center (NTC)	Firearms information (e.g., serial number, model), retail purchaser information (e.g., name, date of birth); federal firearms licensee (FFL) information (e.g., FFL name, FFL number)	ATF employees; federal, state, local, and foreign law enforcement agencies. Non-ATF users have access to information on their own trace requests and those from agencies with which they have a memorandum of understanding.	FFL Theft; FLS; Firearm Recovery Notification Program (FRNP); Interstate Theft; Multiple Sales (MS); Trace	Trace
Firearms and Explosives Import System	Tracks information on the importation of firearms and explosives into the United States	Firearms and Explosives Services Division	Firearms information (e.g., serial number, model), retail purchaser information (e.g., name, address); FFL information (e.g., FFL name, FFL number)	ATF employees have read-only access, Firearms and Explosives Services Division analysts have edit rights	eForms; FLS	No ATF firearms-related data systems
Firearms Information Reporting System (FIRES)	Prints paper copies of reports of closed traces and other NTC reports	NTC	Firearms information (e.g., serial number, model); retail purchaser, possessor, and associates information (e.g., first and last name); FFL information (e.g., city and state)	NTC employees and ATF personnel at Crime Gun Intelligence Centers	FFL Theft; FLS; FRNP; Interstate Theft; MS; Trace	No ATF firearms-related data systems

Appendix II: Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) Firearms-Related Data Systems

Data system	Purpose, as designed	Responsible ATF branch	Contents related to firearms purchaser information <sup>a</sup>	Who can view the information	Imports information from	Exports information to
Firearms Tracing System (FTS) <sup>c</sup>	Overarching data system that contains firearms trace information related to Demand, FFL Theft, Firearm Recovery Notification Program, Interstate Theft, Multiple Sales, and Trace, in order to respond to trace requests and analyze crime and firearms data	NTC	Firearms information (e.g., serial number, model), retail purchaser information (e.g., name, date of birth); FFL information (e.g., FFL name, FFL number)	Selected NTC personnel and ATF field agents	FFL Theft; FLS; FRNP; Interstate Theft; MS; Trace	No ATF firearms-related data systems
Interstate Theft	Collects and tracks, for criminal enforcement purposes, information on thefts of firearms during interstate shipment between FFLs	NTC	Firearms information (e.g., serial number, model), retail purchaser information (e.g. name); FFL information (e.g., FFL name, FFL number)	eTrace and FTS users	FLS	eTrace; FIRES; FTS (Data related to Interstate Theft are contained in FTS.)
National Firearms Act System (NFA) / National Firearms Registration and Transfer Record System (NFRTR) <sup>d</sup>	Collects and tracks data from applications and forms submitted by manufacturers, dealers, and owners of NFA firearms (i.e., machine guns, destructive devices, and certain other firearms) to monitor and enforce these classes of firearms for regulatory and criminal enforcement	Firearms and Explosives Services Division	Firearms information (e.g., serial number, model), retail purchaser information (e.g., name, date of birth); FFL information (e.g., FFL name, FFL number). Original and subsequent purchasers are maintained as part of the system.	ATF employees with supervisor approval have read-only access, NFRTR analysts have edit rights	FLS; National Firearms Act Special Occupational Tax System (NSOT)	No ATF firearms-related data systems

Appendix II: Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) Firearms-Related Data Systems

Data system	Purpose, as designed	Responsible ATF branch	Contents related to firearms purchaser information <sup>a</sup>	Who can view the information	Imports information from	Exports information to
National Integrated Ballistic Information Network (NIBIN)	Stores images and digital signatures of shell casings and bullets after they have been fired in order to connect them from a crime scene to a firearm, and to other related crime scenes	NIBIN Branch	Firearms information (e.g., serial number, model). Firearms possessor information—limited to first, middle, and last name—but that information is not searchable.	Federal, state and local personnel including contractors	Closed system with no direct link to any other ATF system	Closed system with no direct link to any other ATF system
NFORCE	ATF case management system that, among other things, collects and tracks firearms data that have been collected for criminal investigative purposes	National Field Office Case Information System Branch	Firearms information (e.g., serial number, model); personal information for individuals including possessors, legal owners, or individuals who recovered the firearm (e.g., first and last name)	ATF special agents, industry operations investigators and assistants, and research specialists	ATF NICS Referral	No ATF firearms-related data systems
NSPECT	Collects and tracks ATF industry operations investigators' regulatory enforcement work	National Field Office Case Information System Branch	Firearms information (e.g., manufacturer, model) of firearms related to regulatory violations; retail purchaser information only in certain cases of regulatory violations	ATF industry operations investigators and assistants, and some special agents	Closed system with no direct link to any other ATF system	Closed system with no direct link to any other ATF system
Suspect Person Database	Collects information related to an individual currently under active criminal investigation who is suspected of illegally using or trafficking firearms.	Violent Crime Analysis Branch	Suspect information (e.g., name, identification numbers such as driver's license number)	Violent Crime Analysis Branch analysts	Closed system with no direct link to any other ATF system	Closed system with no direct link to any other ATF system



Appendix II: Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) Firearms-Related Data Systems

Data system	Purpose, as designed	Responsible ATF branch	Contents related to firearms purchaser information <sup>a</sup>	Who can view the information	Imports information from	Exports information to
Trace	Collects firearms trace requests from law enforcement officials and the information obtained about traced firearms through the tracing process—for example, from manufacture or import through the distribution chain to the point of first retail sale	NTC	Firearms information (e.g., serial number, model), retail purchaser information (e.g., name, date of birth); FFL information (e.g., FFL name, FFL number)	ATF employees; federal, state, local, and foreign law enforcement agencies. Federal, state, local, and foreign law enforcement agencies only have access to information on their own trace requests and those from agencies with which they have a memorandum of understanding.	eTrace; FFL Information Database; FLS	Electronic Trace Operation Workflow Reporting System; eTrace; FIRES; FTS (Data related to Trace are contained in FTS.)

Source: GAO analysis of ATF data. | GAO-16-552

<sup>a</sup>In this table, “Contents” may refer to information that is accessible by the data system, but that is not necessarily housed in the data system. For example, some systems do not contain original records, but rather pull data from another system in order to print a report or fill out a form.

<sup>b</sup>Under the Brady Handgun Violence Prevention Act, Pub. L. No. 103-159, 107 Stat. 1536 (1993), and implementing regulations, the Federal Bureau of Investigation, within DOJ, and designated state and local criminal justice agencies use NICS to conduct background checks on individuals seeking to purchase firearms from FFLs or obtain permits to possess, acquire, or carry firearms. NICS was established in 1998.

<sup>c</sup>FTS does not contain original records, rather it imports data from its subsystems in order to conduct analysis.

<sup>d</sup>NFRTR contains firearms purchaser information pursuant to Title 26 of the IRS code, 26 U.S.C. Chapter 53, regarding the registration and transfers of registration taxes. Specifically, it states that there should be a central registry, called the National Firearms Registration and Transfer Record, of all firearms as defined in the code, including machine guns, destructive devices such as bazookas and mortars, and “other” “gadget-type” weapons such as firearms made to resemble pens.

**Appendix II: Bureau of Alcohol, Tobacco,  
Firearms and Explosives (ATF) Firearms-  
Related Data Systems**

**Table 5: Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) Firearms-Related Data Systems That Do Not Contain Retail Purchaser Information**

<b>Data system</b>	<b>Purpose</b>
Annual Firearms Manufacturing and Exportation Report System	Tracks firearms production and export data that are gathered annually from licensed manufacturers and exporters for regulatory enforcement
Demand <sup>a</sup>	Collects information from federal firearms licensees (FFL) who do not comply with their statutory responsibility to respond within 24 hours to firearms trace requests; collects information on used guns from FFLs who had 10 or more guns traced to them the previous calendar year with a “time-to-crime” of 3 years or less <sup>b</sup> . (Data related to Demand are contained in the Firearms Tracing System [FTS].)
eForms	Allows industry members to electronically complete and submit forms, such as applying for permits to import firearms, ammunition, and implements of war
Electronic Trace Operation Workflow Reporting System	Tracks work assignments at the National Tracing Center (NTC) and manages the overall firearms tracing workflow process
Federal Licensing System	Tracks applications and permits for federal firearms and explosives licenses for regulatory and criminal enforcement
FFL Ezcheck	Compiles information in a public web portal for determining the validity of FFLs
FFL Information Database	Collects additional FFL information at NTC that may be useful in completing trace requests, such as additional dealer information like phone numbers or other points of contact
FFL Theft	Collects and tracks data on firearms stolen, or missing in inventory, from FFLs’ places of business for regulatory and criminal enforcement. (Data related to FFL Theft are contained in FTS.)
National Firearms Act Special Occupational Tax System (NSOT)	Calculates and tracks Special Occupational Tax payments received from regulated industry members. The system processes and stores information relative to the identity of taxpayers, tax returns, and the amount of tax paid

Source: GAO analysis of ATF data. | GAO-16-552

<sup>a</sup>This system contains information from reports related to Demand Letters 1 and 2.

<sup>b</sup>Time-to-crime is the time period between the retail sale of a firearm and its recovery from use in a crime.

# Appendix III: Out-of-Business Records Imaging System (OBRIS)

Since 1968, the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) has received several hundred million out-of-business records. According to ATF officials, as of May 5, 2016 there are about 8,060 boxes of paper records at the National Tracing Center (NTC) awaiting scanning into digital images before they are to be destroyed. At NTC, we observed these boxes lining the walls and stacked along cubicles and file cabinets, as shown in figure 4. The officials stated that, according to the General Services Administration, the facility floor will collapse if the number of boxes in the building increases to 10,000.<sup>1</sup> Therefore, when the number of boxes approaches this quantity, NTC staff move the boxes to large shipping containers outside. Currently, there are three containers of boxes on the property, which contain records awaiting destruction.

**Figure 4: Numerous Out-of-Business Records File Boxes Lining the Halls at the Bureau of Alcohol, Tobacco, Firearms and Explosives' National Tracing Center**



Source: GAO. | GAO-16-552

<sup>1</sup>The General Services Administration serves as the federal government's landlord and designs, builds, manages, and leases the facilities supporting the needs of other federal agencies throughout the government. As part of this mission, the agency provides policies, guidelines, and standards involving the government facilities, which cover, among other things, facility management, assignment and utilization of space, and safety and environmental management.

Prior to digital imaging, records were housed on microfilm or in storage boxes, and the system was referred to simply as Microfilm Retrieval System.<sup>2</sup> According to NTC officials, ATF is transitioning to digital imaging because of the benefits of improved image resolution, speed in accessing images, simultaneous accessibility of images to complete urgent traces, and less voluminous storage. The digitized records also helped mitigate the challenges of deteriorating microfilm images and maintaining the obsolete technology of microfilm. According to officials, NTC has completed the process of converting the microfilm records to digital images, and officials expect that the images will become fully available to NTC analysts for tracing during fiscal year 2016. Currently, access is limited to a single workstation within NTC. While ATF finalizes this effort, staff continue to access the records in the NTC microfilm archive in order to respond to trace requests, as shown in figure 5.

Before fiscal year 1991, ATF stored the out-of-business records in boxes with an NTC file number assigned to each federal firearms licensee (FFL). If, during a trace, ATF determined that the FFL who sold the firearm was out of business and had sent in its records, ATF employees were to locate the boxes containing the records and manually search them for the appropriate serial number. According to ATF, this was a time-consuming and labor-intensive process, which also created storage problems. In 1991, ATF began a major project to microfilm the out-of-business records and destroy the originals. Instead of in boxes, the out-of-business records were stored on microfilm cartridges, with the FFL numbers assigned to them. Although this system occupied much less space than the hard copies of the records, ATF officials said it was still time-consuming to conduct firearms traces because employees had to examine up to 3,000 images on each microfilm cartridge to locate a record. The officials stated that scanning records and creating digital images in OBRIS has sped up the ability to search for out-of-business records during a trace. According to the officials, it takes roughly 20 minutes to complete a trace with digital images and roughly 45 minutes using microfilm.

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<sup>2</sup>ATF refers to the predecessor to OBRIS as the Microfilm Retrieval System. At the time of our 1996 report, we referred to it as the Out-of-Business Records System. This was one of the systems we reviewed for compliance in that report. See GAO, *Federal Firearms Licensee Data: ATF's Compliance with Statutory Restrictions*, GAO/GGD-96-174 (Washington, D.C.: Sept. 11, 1996).

Figure 5: Bureau of Alcohol, Tobacco, Firearms, and Explosives' Microfilm Archive for Records from Out-of-Business Federal Firearms Licensees



Source: GAO. | GAO-16-552

# Appendix IV: Firearm Recovery Notification Program Submission Form

**Figure 6: Firearm Recovery Notification Program Submission Form (ATF Form 3317.1)**

U.S. Department of Justice Bureau of Alcohol, Tobacco, Firearms and Explosives		<b>Suspect Gun Submission</b>
Requesting ATF Special Agent:	ATF IN (Required):	<b>To: ATF National Tracing Center Division Law Enforcement Support Branch Suspect Gun Program</b>  Phone Number: (800) 788-7133 Fax Number: (800) 578-7223 E-Mail: suspectgunprogram@atf.gov
Field Division:	Field Office:	
Phone Number:	Fax Number:	
<b>Release Information (Please check one)</b>		
<input type="checkbox"/> NTC may release trace history to other requestors <input type="checkbox"/> Do Not release trace history to other requestors		
Please Check Any of the Following That Apply:		
<input type="checkbox"/> Large Quantities of Firearms Purchased by Individual <input type="checkbox"/> Firearms Suspected in Trafficking, but not Stolen From an FFL Dealer <input type="checkbox"/> FFL Dealers Suspected of Performing Firearms Transactions Without Proper Documentation <input type="checkbox"/> Firearms Purchased by Suspected Straw Purchasers <input type="checkbox"/> Other (Explain in synopsis)		
<b>Federal Firearms License (FFL) Information</b>		
Trade Name/Licensee:		
Federal Firearms License (FFL) Number:		
Address:		
City and State:		
<b>Suspect Information</b>		<b>Purchaser Information (If different from suspect information)</b>
Name:		Name:
Address:		Address:
City:		City:
Date of Birth:		Date of Birth:
Social Security Number:		Social Security Number:
Purchase Date (If applicable):		Purchase Date (If applicable):
Firearm Information: (Please attach a listing of all firearms to be entered into the Suspect Gun Database. Please include the following information: serial number, caliber, type, manufacturer, model, importer, and country of origin.)		
Brief Synopsis of Investigation:		
ATF Form 3317.1 Revised August 2006		

Source: Bureau of Alcohol, Tobacco, Firearms and Explosives. | GAO-16-552



# Appendix V: Multiple Sales Submission Form for Multiple Sales Reports

**Figure 7: Multiple Sales Submission Form for Multiple Sales Reports (ATF Form 3310.4)**

**U.S. Department of Justice**  
Bureau of Alcohol, Tobacco, Firearms and Explosives

OMB No. 1140-0003 (06/30/2018)

**Report of Multiple Sale or Other Disposition of Pistols and Revolvers**

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(Please complete all information)

1. Date of Report

2a. Federal Firearms Licensee (FFL) Number

2b. Business or Trade Name and Address *(If you have complete information available on a rubber stamp, please place information here.)*

2c. Are any of the firearm(s) connected to another multiple sale? *(If yes, specify date)* See instruction 2.  Yes  No Date \_\_\_\_\_

2d. If you sold these firearms at a gun show or other qualifying event, identify the event and provide a complete address of the event.

3. Any Combination of Pistols and Revolvers Disposed of to the Same Unlicensed Person at One Time or During Any Five Consecutive Business Days

Type <i>(Pistol or revolver)</i>	Serial Number	Manufacturer	Model	Importer	Caliber	Transfer Date

4. Transferee's Name *(Last, first, middle)*

5. Residence Address *(Number, street, city, county, state, zip code)*

6. Sex

7a. Ethnicity  
 Hispanic or Latino  
 Not Hispanic or Latino

7b. Race *(Check one or more boxes.) (See instruction 5.)*  
 American Indian or Alaska Native     African American or Black     White  
 Asian     Native Hawaiian or Other Pacific Islander

8. Identification Number

9. Type of Identification *(ID)*

10. ID State

11. Date of Birth

12. Place of Birth *(City, state, country)*

13. If the buyer of the firearms listed in item 4 is a person authorized to act on behalf of a corporation, company, association, partnership or other such business entity, you must complete the following, if applicable: *(See instruction 6.)*  
**Name and Address of Business Entity**

14a. Identify the official designated by the State or local authorities where you, the FFL, will be forwarding Copy 2.

Name of Agency

Street Address, City, and State

14b. Date Copy 2 was forwarded to Agency

15. Additional Information Relating to the Transfer of the Firearms *(if applicable)*

16. Name of Employee Filling Out This Form

Date

When Fax is available, please Fax to 1-877-283-0288.

ATF E-Form 3310.4  
Revised May 2012

Source: Bureau of Alcohol, Tobacco, Firearms and Explosives. | GAO-16-552

# Appendix VI: Multiple Sales Submission Form for Demand Letter 3 Reports

**Figure 8: Multiple Sales Submission Form for Demand Letter 3 Reports (ATF Form 3310.12)**

U.S. Department of Justice  
Bureau of Alcohol, Tobacco, Firearms and Explosives

OMB No. 1140-0100

**Report of Multiple Sale or Other Disposition  
of Certain Rifles**

**(Please complete all information)**

1. Date of Report \_\_\_\_\_ 2a. Federal Firearms Licensee (FFL) Number \_\_\_\_\_

2b. Business or Trade Name and Address (If you have complete information available on a rubber stamp, please place information here.) \_\_\_\_\_

2c. Are any of the firearm(s) connected to another multiple sale? (If yes, specify date)  Yes  No Date \_\_\_\_\_

3. Rifles Sold or Otherwise Disposed of to the Same Unlicensed Person at One Time or During Any Five Consecutive Business Days

Serial Number	Manufacturer	Importer	Model	Caliber	Disposition Date

4. Transferee's Name (Last, first, middle) \_\_\_\_\_

5. Residence Address (Number, street, city, county, state, zip code) \_\_\_\_\_

6. Sex \_\_\_\_\_ 7. Race

American Indian or Alaska Native  Asian  Native Hawaiian or Other Pacific Islander  
 African American or Black  Hispanic or Latino  White  Other (Specify) \_\_\_\_\_

8. Identification Number \_\_\_\_\_ 9. Type of Identification \_\_\_\_\_ 10. ID State \_\_\_\_\_ 11. Date of Birth \_\_\_\_\_ 12. Place of Birth (City, county, state, country) \_\_\_\_\_

13. If the buyer of the firearms listed in item 4 is a person authorized to act on behalf of a corporation, company, association, partnership or other such business entity, you must record the following:  
**Name and Address of Business Entity**  
 \_\_\_\_\_  
 \_\_\_\_\_

14. Additional Information Relating to the Transfer of the Firearms  
 \_\_\_\_\_  
 \_\_\_\_\_

15. Name of Employee Filling Out This Form \_\_\_\_\_ 16. Date This Form Was Completed \_\_\_\_\_

When Fax is Available, Please Fax to 1-877-283-0288.

Select One \_\_\_\_\_

ATF E-Form 3310.12  
Revised July 2011

Source: Bureau of Alcohol, Tobacco, Firearms and Explosives. | GAO-16-552



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# Appendix VII: Legal Analysis of Compliance with the Restriction on Consolidation or Centralization of Firearms Records

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A provision in the fiscal year 2012 appropriation for the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) prohibits the use of the appropriation to consolidate or centralize records on the acquisition and disposition of firearms maintained by federal firearms licensees (FFL).<sup>1</sup> This statutory restriction originated in the agency's appropriation for fiscal year 1979<sup>2</sup> and, with some modification, was made permanent in fiscal year 2012. We reviewed whether ATF's collection and maintenance of acquisition and disposition records in four data systems—Out-of-Business Records Imaging System (OBRIS), Access 2000 (A2K), Firearm Recovery Notification Program (FRNP), and Multiple Sales (MS)<sup>3</sup>—violated this restriction.<sup>4</sup>

As discussed below, we considered the critical characteristics of each data system and related ATF activities in light of the restriction and in the context of ATF's statutory authorities. We conclude that ATF violated the restriction when it collected and maintained the disposition records of FFL participants in A2K on a single server within the National Tracing Center (NTC) after those FFLs had discontinued their operations. We also agree with ATF's 2009 determination that the agency violated the restriction when it collected and maintained records of certain FFLs engaged primarily in the sale of used firearms as part of FRNP. ATF's failure to comply with the restriction on consolidation or centralization also violated the Antideficiency Act. Under section 1351 of title 31, United States Code,

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<sup>1</sup>See Consolidated and Further Continuing Appropriations Act, 2012, Pub. L. No. 112-55, 125 Stat. 552, 609-610 (2011). Generally, FFLs are required to maintain records of the acquisition of firearms (whether such acquisition was by manufacture, import, purchase, or other acquisition), recording information such as the type, model, caliber or gauge, serial number of the firearm, and the date of acquisition. Similarly, FFLs are also generally required to maintain records of the disposition of firearms, recording information related to the firearm, the person the firearm was transferred to, and the date of the transaction, among other things. See 18 U.S.C. § 923(g)(1); 27 C.F.R. §§ 478.121-478.125.

<sup>2</sup>See Treasury, Postal Service, and General Government Appropriations Act, 1979, Pub. L. No. 95-429, 92 Stat. 1001, 1002 (1978).

<sup>3</sup>The data related to FRNP and MS are contained within ATF's Firearms Tracing System.

<sup>4</sup>By letter of December 21, 2015 to the ATF Acting Director, we solicited the agency's views on our description of each system and its interpretation of the restriction as applied to each system. We received a response on January 27, 2016 from ATF's Assistant Director, Office of Enforcement Programs and Services.

the agency is required to report these violations to the President and Congress.

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## Background

ATF, a criminal and regulatory enforcement agency within the Department of Justice (DOJ), is responsible for the regulation of the firearms industry and enforcement of federal statutes regarding firearms, including criminal statutes related to the illegal possession, use, transfer, or trafficking of firearms.<sup>5</sup> One component of ATF's criminal enforcement mission involves the tracing of firearms used in crimes to identify the first retail purchaser of a firearm from an FFL.<sup>6</sup> To conduct a trace, the requesting law enforcement agency must identify the manufacturer or importer of the firearm and its type, caliber, and serial number, as well as other information related to the recovery, crime, and possessor. According to ATF, NTC<sup>7</sup> personnel must typically use the information provided by the law enforcement agency to contact the manufacturer or importer to determine when and to whom the firearm in question was sold.<sup>8</sup> The manufacturer or importer may have sold the firearm to an FFL wholesaler. In that case, NTC personnel would contact the FFL wholesaler to determine when and to whom the firearm in question was sold, usually to an FFL retailer. The tracing process continues until NTC identifies the first retail purchaser who is a nonlicensee.

The Gun Control Act of 1968, as amended, established a system requiring FFLs to record firearms transactions, maintain that information at their business premises, and make such records available to ATF for

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<sup>5</sup>28 U.S.C. § 599A.

<sup>6</sup>See 18 U.S.C. § 923(g)(7). The term "federal firearms licensee" (FFL) generally means a person licensed under the Gun Control Act of 1968, as amended, to engage in the business of importing, manufacturing, or dealing in firearms, or in the course of such business to ship, transport, or receive any firearm in interstate or foreign commerce.

<sup>7</sup>ATF maintains a firearms tracing operation at NTC in Martinsburg, West Virginia. NTC traces firearms suspected of being involved in crimes to the first retail purchaser to assist law enforcement in identifying suspects.

<sup>8</sup>There are instances where ATF is able to complete traces without contacting FFLs by checking databases that it maintains under various authorities.

inspection and search under certain prescribed circumstances.<sup>9</sup> This system was intended to permit law enforcement officials to trace firearms involved in crimes as described above while allowing the records themselves to be maintained by the FFLs rather than by a governmental entity. As originally enacted, the Gun Control Act required FFLs to submit such reports and information as the Secretary of the Treasury prescribed by regulation and authorized the Secretary to prescribe such rules and regulations as deemed reasonably necessary to carry out the provisions of the act.<sup>10</sup>

In 1978, citing the general authorities contained in the Gun Control Act, ATF proposed regulations that would have required FFLs to report most of their firearms transactions to ATF through quarterly reports. Under the proposed regulations, these FFL reports of sales and other dispositions would not have identified a nonlicensed transferee, such as a retail purchaser, by name and address.<sup>11</sup> However, the proposed regulations prompted concerns from those who believed that the reporting requirements would lead to the establishment of a system of firearms registration. Congress included in ATF's fiscal year 1979 appropriation for salaries and expenses a provision prohibiting the use of funds for administrative expenses for the consolidation or centralization of certain FFL records, or the final issuance of the 1978 proposed regulations. The provision continues to apply, with some modifications as described below.

The 1979 appropriation provided:

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<sup>9</sup>Pub. L. No. 90-618, 82 Stat. 1213 (1968) (codified, as amended, at 18 U.S.C. §§ 921-931). Section 923(g)(1) provides that FFLs shall not be required to submit reports and information with respect to their records and their contents to the Attorney General except as provided in section 923. The Attorney General delegated to the Director of ATF the authority to "investigate, administer, and enforce the laws related to alcohol, tobacco, firearms, explosives, and arson, and perform other duties as assigned by the Attorney General, including exercising the functions and powers of the Attorney General" under a number of provisions of law, including 18 U.S.C. Chapter 44 (related to firearms). 28 C.F.R. § 0.130(a).

<sup>10</sup>See Pub. L. No. 90-618, § 102, 82 Stat. 1213, 1223-24, 1226 (1968) (codified, as amended, at 18 U.S.C. §§ 923(g)(1) and 926).

<sup>11</sup>Firearms Regulations, 43 Fed. Reg. 11,800, 11,802 (proposed Mar. 21, 1978).

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**Appendix VII: Legal Analysis of Compliance  
with the Restriction on Consolidation or  
Centralization of Firearms Records**

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[t]hat no funds appropriated herein shall be available for administrative expenses in connection with consolidating or centralizing within the Department of the Treasury the records of receipt and disposition of firearms maintained by Federal firearms licensees or for issuing or carrying out any provisions of the proposed rules of the Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms, on Firearms Regulations, as published in the Federal Register, volume 43, number 55, of March 21, 1978.<sup>12</sup>

The Senate Appropriations Committee report explained the purpose of the provision as follows:

The Bureau of Alcohol, Tobacco, and Firearms (BATF) has proposed implementation of several new regulations regarding firearms. The proposed regulations, as published in the Federal Register of March 21, 1978 would require:

- (1) A unique serial number on each gun manufactured or imported into the United States.
- (2) Reporting of all thefts and losses of guns by manufacturers, wholesalers and dealers.
- (3) Reporting of all commercial transactions involving guns between manufacturers, wholesalers and dealers.

The Bureau would establish a centralized computer data bank to store the above information. It is important to note that the proposed regulations would create a central Federal computer record of commercial transactions involving all firearms—whether shotguns, rifles, or handguns. There are approximately 168,000 federally licensed firearms dealers, manufacturers, and importers. It is estimated that the proposed regulations would require submission of 700,000 reports annually involving 25 million to 45 million transactions.

It is the view of the Committee that the proposed regulations go beyond the intent of Congress when it passed the Gun Control Act of 1968. It would appear that BATF and the

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<sup>12</sup>Treasury, Postal Service, and General Government Appropriations Act, 1979, Pub. L. No. 95-429, 92 Stat. 1001, 1002 (1978). In 2003, ATF was transferred from the Department of the Treasury to DOJ pursuant to the Homeland Security Act of 2002. Pub. L. No. 107-296, §§ 1111-1115, 116 Stat. 2135, 2274-80 (2002). Successive appropriations acts reflected the transfer in the restriction on consolidation or centralization. See, e.g., Consolidated Appropriations Act, 2004, Pub. L. No. 108-199, 118 Stat. 3, 53 (2004).

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**Appendix VII: Legal Analysis of Compliance  
with the Restriction on Consolidation or  
Centralization of Firearms Records**

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Department of Treasury are attempting to exceed their statutory authority and accomplish by regulation that which Congress has declined to legislate.<sup>13</sup>

The reference to the 1978 proposed rules was removed from the annual provision as of the fiscal year 1994 appropriations act, but the prohibition against using funds for administrative expenses for consolidating or centralizing records was included in each of ATF's annual appropriations through fiscal year 2012 in much the same form. In fiscal year 1994, the Treasury, Postal Service, and General Government Appropriations Act, 1994, expanded the prohibition to include the consolidation or centralization of portions of records and to apply to the use of funds for salaries as well as administrative expenses, stating "[t]hat no funds appropriated herein shall be available for salaries or administrative expenses in connection with consolidating or centralizing, within the Department of the Treasury, the records, or any portion thereof, of acquisition and disposition of firearms maintained by Federal firearms licensees" (emphasis added).<sup>14</sup>

The fiscal year 2012 Consolidated and Further Continuing Appropriations Act made the restriction on ATF's use of funds permanent, incorporating the word "hereafter" to indicate future application.<sup>15</sup> Specifically, it stated

"[t]hat no funds appropriated herein or *hereafter* shall be available for salaries or administrative expenses in connection with consolidating or centralizing, within the

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<sup>13</sup>S. Rep. No. 95-939, at 11-12 (1978).

<sup>14</sup>Pub. L. No. 103-123, 107 Stat. 1226, 1229 (1993).

<sup>15</sup>Appropriations acts are, by their nature, nonpermanent legislation, and provisions in appropriations acts are presumed effective only for the covered fiscal year. B-319414, June 9, 2010. However, where Congress incorporates "words of futurity," such as "hereafter," appropriations provisions are generally construed to be permanent. *Id.* See *also* B-316510, July 15, 2008 and B-309704, Aug. 28, 2007 (provisions prohibiting the use of appropriated funds for disclosures from ATF's Firearms Tracing System found to be permanent).

Department of Justice, the records, or any portion thereof, of acquisition and disposition of firearms maintained by Federal firearms licensees” (emphasis added).<sup>16</sup>

The conference report accompanying the act explained that the provision had been made permanent.<sup>17</sup>

We previously considered ATF’s compliance with the restriction on consolidation or centralization in 1996 in connection with the agency’s Microfilm Retrieval System and Multiple Sales System.<sup>18</sup> We stated that the restriction did not preclude all information practices and data systems that involved an element of consolidation or centralization, but that it had to be interpreted in light of its purpose and in the context of other statutory provisions governing ATF’s acquisition and use of information on firearms.<sup>19</sup> In this respect, our analyses reflected the well-established principle that statutory provisions should be construed harmoniously so as to give them maximum effect whenever possible, avoiding the conclusion that one statute implicitly repealed another in the absence of clear evidence to the contrary.<sup>20</sup> We found that the two systems complied with the statutory restriction on the grounds that ATF’s consolidation of

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<sup>16</sup>Pub. L. No. 112-55, 125 Stat. 552, 609 (2011). An additional provision, first enacted in 1996, was also made permanent in the fiscal year 2012 appropriations act. *Id.* at 610. The Omnibus Consolidated Appropriations Act, 1997, limited the methods ATF could use to retrieve information from records submitted to the agency by FFLs going out of business. It stated “[t]hat no funds under this Act may be used to electronically retrieve information gathered pursuant to 18 U.S.C. § 923(g)(4) by name or personal identification code.” Pub. L. No. 104-208, 110 Stat. 3009, 3009-319 (1996). This restriction was also repeated in each ATF annual appropriations act until it was made permanent in 2012.

<sup>17</sup>See H.R. Rep. No. 112-284, at 240 (2011) (Conf. Rep.).

<sup>18</sup>ATF refers to the predecessor to OBRIS as the Microfilm Retrieval System. In our 1996 report, we referred to this system as the Out-of-Business Records System and we referred to MS as the Multiple Sales System. See GAO, *Federal Firearms Licensee Data: ATF’s Compliance with Statutory Restrictions*, GAO/GGD-96-174 (Washington, D.C.: Sept. 11, 1996).

<sup>19</sup>As discussed below, the United States Court of Appeals for the Fifth Circuit echoed the reasoning embodied in our 1996 report when considering ATF’s collection of information under a 2011 initiative. See *10 Ring Precision, Inc. v. Jones*, 722 F.3d 711, 715-16, 722 (5th Cir. 2013) (upholding ATF’s inquiry to certain FFLs operating along the southwest border, referred to as “Demand Letter 3”).

<sup>20</sup>See *TVA v. Hill*, 437 U.S. 153, 190-91 (1978); *Posadas v. Nat’l City Bank*, 296 U.S.497, 503 (1936).

records was incident to carrying out specific responsibilities set forth in the Gun Control Act of 1968, as amended, and that the systems did not aggregate data on firearms transactions in a manner that went beyond these purposes. Thus, our analysis did not turn on the presence or absence of retail purchaser information in the system, but rather on the extent to which the aggregation of data corresponded to a statutory purpose. We employ a similar analytical approach, which ATF has also adopted, in assessing the four systems under review here, taking into account ATF's statutory authorities and the critical characteristics of each system.

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## Discussion

Two of the four data systems we reviewed—OBRIS and MS—do not consolidate or centralize firearms in violation of the restriction contained in the fiscal year 2012 appropriations act. In contrast, ATF violated the restriction when it collected and maintained disposition records of FFL participants in A2K on a single server at NTC after they had discontinued their operations. ATF also violated the restriction when it collected and maintained records of certain FFLs engaged primarily in the sale of used firearms as part of FRNP.

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## OBRIS

OBRIS is ATF's repository for records submitted by FFLs that have permanently discontinued their operations, as required by the Gun Control Act of 1968, as amended. Section 923(g)(1)(A) of title 18, United States Code, requires each FFL to maintain such records of importation, production, shipment, receipt, sale, or other disposition of firearms at its place of business as prescribed by the Attorney General.<sup>21</sup> Under 18 U.S.C. § 923(g)(4), when a firearms business is discontinued and there is no successor, the records required to be maintained by FFLs must be delivered within 30 days to ATF.<sup>22</sup>

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<sup>21</sup> See, e.g., 27 C.F.R. §§ 478.122 (requires licensed importers to maintain records of importation and disposition), 478.123 (requires licensed manufacturers to maintain records of production and disposition), 478.124 (requires FFLs to record a sale or other disposition of any firearm to any unlicensed person), and 478.125 (requires FFLs to record each receipt and disposition of firearms).

<sup>22</sup> Under 18 U.S.C. § 923(g)(4), "where discontinuance of the business is absolute, such records shall be delivered within thirty days after the business discontinuance to [ATF]." See 27 C.F.R. § 478.127.

ATF's system for maintaining the records of out-of-business FFLs for its statutory tracing function has evolved over time in response to logistical challenges and technological advances. Prior to fiscal year 1991, ATF maintained out-of-business FFLs' records in hard copy, with a file number assigned to each FFL. During a trace, if ATF determined that a firearm had been transferred or disposed of by an out-of-business FFL, ATF employees manually searched the FFL's records until they found the records corresponding to the serial number of the firearm being traced. According to ATF, this was a time-consuming and labor-intensive process, and the volume of records created storage problems. In 1991, ATF began a major project to microfilm these records and destroy the originals. For fiscal year 1992, Congress appropriated \$650,000 "solely for improvement of information retrieval systems at the National Firearms Tracing Center."<sup>23</sup> In fiscal year 1992, ATF began creating a computerized index of the microfilmed records containing the information necessary to identify whether ATF had a record relating to a firearm being traced. The index contained the following information: (1) the cartridge number of the microfilm; (2) an index number; (3) the serial number of the firearm; (4) the FFL number; and (5) the type of document on microfilm, i.e., a Firearms Transaction Record form or acquisition and disposition logbook pages. This information was stored on a database in ATF's mainframe computer to allow searches. Other information, however, including a firearms purchaser's name or other identifying information and the manufacturer, type, and model remained stored on microfilm cartridges and was not computerized. Therefore, this information was not accessible to ATF personnel through a text search.

In our 1996 report, we concluded that the Microfilm Retrieval System did not violate the restriction on consolidation or centralization due to its statutory underpinnings and design. ATF had initially required out-of-business FFLs to deliver their records to ATF through a 1968 regulation.<sup>24</sup> We found no indication in its legislative history that the appropriations act restriction was intended to overturn this regulation and noted that, historically, out-of-business records had been maintained at a central location. We also explained that the Firearms Owners' Protection Act of

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<sup>23</sup>Pub. L. No. 102-141, 105 Stat. 834, 836 (1991).

<sup>24</sup>33 Fed. Reg. 18,555, 18,571 (Dec. 14, 1968) (originally codified at 26 C.F.R. § 178.127).



1986 (FOPA) had codified the ATF regulation, affirming the agency's authority to collect this information,<sup>25</sup> and that a subsequent appropriations act had provided funding specifically for ATF's microfilming effort.<sup>26</sup> Finally, ATF's system of microfilmed records did not capture and store certain key information, such as firearms purchaser information, in an automated file. In this regard, we found that the system did not aggregate information in a manner beyond that necessary to implement the Gun Control Act of 1968, as amended by FOPA.

In 2006, ATF developed OBRIS, according to ATF officials, due to significant practical concerns related to the conversion of paper-based records to microfilm; the deterioration of the images captured on microfilm; and the difficulty in procuring microfilm readers, parts, and maintenance services. The conference report accompanying ATF's annual appropriation for fiscal year 2005 indicated support for this project, which was designed to convert the microfilm images of FFL records in the Microfilm Retrieval System to digital images. The report stated:

Conversion of Records.—The conferees recognize the need for the ATF to begin converting tens of thousands of existing records of out-of-business Federal firearms dealers from film to digital images at the National Tracing Center. Once the out-of-business records are fully converted, the search time for these records will be reduced to an average of 5 minutes per search from the current average of 45 minutes per search. This significant time saving will ultimately reduce overall costs and increase efficiency at the National Tracing Center. Therefore, the conference agreement includes a \$4,200,000 increase for the ATF to hire additional contract personnel to begin this conversion.<sup>27</sup>

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<sup>25</sup>Pub. L. No. 99-308, § 103, 100 Stat. 449, 453-456 (1986) (codified at 18 U.S.C. § 923(g)(4)). The Senate-passed version of FOPA would have prohibited the Secretary of the Treasury from maintaining out-of-business records at a centralized location and from entering them into a computer for storage or retrieval. S. 49, 99th Cong. (1985). This provision was dropped from the version of the bill passed by Congress.

<sup>26</sup>Treasury, Postal Service and General Government Appropriations Act, 1992, Pub. L. No. 102-141, 105 Stat. 834, 836 (Oct. 28, 1991).

<sup>27</sup>H.R. Rep. No. 108-792, at 734 (2004) (Conf. Rep.).

Similarly, the conference report accompanying the fiscal year 2006 appropriations act reflected the conferees' support for ATF's transition of out-of-business records to OBRIS.<sup>28</sup>

Since 2006, NTC has converted records submitted by FFLs discontinuing their operations to digital images in OBRIS. Specifically, NTC sorts and scans records provided by out-of-business FFLs, converting and storing them in an image repository on an electronic server.<sup>29</sup> Images stored in OBRIS are generally indexed by FFL number.<sup>30</sup> The records themselves are stored as images without optical character recognition so that they cannot be searched or retrieved using text queries, but must be searched through the index, generally by FFL number. After narrowing down the possible records through an index search, an NTC analyst must manually scroll through digital images to identify the record of the particular firearm in question.

The technological changes represented by OBRIS do not compel a different conclusion regarding ATF's compliance with the restriction on consolidation or centralization from the one we reached in 1996 with respect to the predecessor system. The statutory basis for OBRIS is the same as for the Microfilm Retrieval System and OBRIS makes records accessible to the same extent as that system, functioning in essentially the same manner though with enhanced technology. As with the prior microfilm system, users identify potentially relevant individual records through manual review after searching an index using an FFL number, or firearms information if available. In this regard, OBRIS, like its predecessor, does not aggregate records in a manner beyond that

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<sup>28</sup>H.R. Rep. No. 109-272 at 82 (2005) (Conf. Rep.).

<sup>29</sup>ATF officials told us that the agency receives records of out-of-business FFLs in a variety of paper and electronic forms and converts the records to digital images regardless of the form in which they are received.

<sup>30</sup>Certain records are also indexed by firearm description.

required to implement the Gun Control Act of 1968, as amended by FOPA.<sup>31</sup>

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## A2K

We assessed A2K with regard to in-business records and out-of-business records. We conclude that A2K for in-business records complies with the restriction on consolidation or centralization, while A2K for out-of-business records violated the restriction.

### A2K In-Business Records

The Gun Control Act of 1968, as amended, requires FFLs to provide firearms disposition information to ATF in response to a trace request. Specifically, section 923(g)(7) of title 18, United States Code, requires FFLs to respond within 24 hours to a request for records to determine the disposition of firearms in the course of a criminal investigation.<sup>32</sup> Prior to the implementation of A2K, FFLs could only respond to such requests manually. A2K provides manufacturer, importer, and wholesaler FFLs with an automated alternative to facilitate their statutorily required response to ATF requests.

ATF developed A2K in response to requests from firearms industry members<sup>33</sup> for the agency to create a way for them to respond to trace requests other than by having dedicated personnel submit information by phone, fax, or e-mail. Under A2K, ATF provides servers to participating industry members and they upload electronic firearms disposition

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<sup>31</sup>Like the microfilm system, OBRIS also does not violate the prohibition on using funds to electronically retrieve information gathered under 18 U.S.C. § 923(g)(4) by name or any personal identification code. Indeed, as the system is designed, it is not possible to conduct a computerized search of text that would constitute a name or personal identification code.

<sup>32</sup>In pertinent part, the statute requires FFLs to “respond immediately to, and in no event later than 24 hours after the receipt of, a request by the Attorney General for information contained in the records required to be kept by this chapter as may be required for determining the disposition of 1 or more firearms in the course of a bona fide criminal investigation.” See 27 C.F.R. 478.25a.

<sup>33</sup>Industry members are generally manufacturers, importers, and wholesalers. However, some industry members are comprised of more than one FFL, and in rare circumstances, a retail FFL could be part of an industry member. In addition, according to ATF officials and one industry member that we interviewed, some of the A2K disposition records could include sales of firearms to retail purchasers. Therefore, the A2K server includes some number of nonlicensed purchasers.

information on to the servers in an ATF-approved format on a regular basis.<sup>34</sup> A2K includes a secure user web interface to each of the servers and ATF may obtain disposition information by searching individual servers by exact firearm serial number. In 2004, the conference report accompanying ATF's annual appropriation for fiscal year 2005 indicated support for this system, pointing to the increased operational efficiency associated with ATF's immediate access to disposition records through the automated system. The report stated:

[T]he conferees are aware that the Access 2000 program was initiated by ATF to improve the efficiency and reduce the costs associated with firearms tracing incurred by Federal Firearms Licensees (FFLs). ATF and FFL importers, manufacturers, and wholesalers form a partnership in this effort. FFLs take their data from their mainframe computer and import it into a stand-alone server provided by the ATF. The National Tracing Center is connected to this server remotely by secure dial-up and obtains information on a firearm that is subject to a firearms trace. The conferees support this program, which reduces the administrative burdens of the FFL and allows the ATF around the clock access to the records. The ATF currently has 36 Access 2000 partners. The conferees encourage the ATF to place more emphasis on this program and expand the number of partners to the greatest extent possible.<sup>35</sup>

According to ATF, as of April 25, 2016, there are 35 industry members representing 66 individual manufacturer, importer, and wholesaler FFLs currently participating in A2K.

ATF believes that A2K "... has appropriately balanced Congressional concerns related to the consolidation of firearm records with the necessity of being able to access firearm information in support of its underlying mission to enforce the Gun Control Act," as amended. We agree. Given the statutory underpinning and features of the system for in-business FFLs, we conclude that ATF's use of A2K for in-business records does not violate the restriction on the consolidation or centralization of firearms records. ATF's use of A2K for in-business records is rooted in the specific statutory requirement that FFLs respond promptly to ATF trace requests in connection with criminal investigations. In addition, although the system

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<sup>34</sup>According to ATF, industry members may use their own servers and three A2K participants own the servers used for A2K.

<sup>35</sup>H.R. Rep. No. 108-792, at 734 (2004) (Conf. Rep.).

allows FFLs to respond to ATF's trace requests virtually, ATF obtains the same information as it would otherwise obtain by phone, fax, or e-mail and in similar disaggregated form, that is, through multiple servers located at individual FFLs. Moreover, industry members retain possession and control of their disposition records and, according to ATF officials, may withdraw from using A2K—and remove their records from the ATF-accessible servers—at any time. For these reasons, we do not view A2K for in-business records to constitute the type of data aggregation prohibited by the appropriations act restriction on the consolidation or centralization of records within DOJ.

#### A2K Out-of-Business Records

During the course of our review, we found that when participating industry members permanently discontinued their operations, the disposition data maintained in connection with A2K was transferred to ATF, and ATF used the data when conducting firearms traces. Specifically, when an A2K participant went out of business, an ATF contractor remotely transferred the data on the server to a backup disk and the industry member shipped the backup disk with intact disposition records, as well as the blank server, to ATF's NTC. ATF officials placed the data from the backup disk on a single partitioned server at NTC and accessed the data for firearms traces using the same type of interface and URL as used while the industry member was in business. As a result, in response to an industry member-specific query using an exact firearm serial number, the A2K out-of-business server would automatically generate the disposition information related to that firearm serial number.

According to ATF, records of eight industry members were placed on the server at NTC from as early as late 2000 through mid-2012. While ATF estimated that there were approximately 20 million records associated with these industry members on the server, the agency did not have a means of ascertaining the actual number of records. The number of records on the ATF server would have been expected to grow as additional A2K participants discontinued their operations and provided their backup disks to ATF. However, during the course of our review, ATF officials told us that the agency planned to move all of the A2K records into OBRIS and that, once converted to OBRIS images, the records would be searchable like other OBRIS records. In January 2016, ATF officials reported that NTC was in the process of transferring all of the records from the A2K out-of-business records server to OBRIS and a quality-control process was under way to verify the accuracy of the transfer. They subsequently deleted all records from the server in March 2016.

We conclude that ATF's use of A2K with respect to out-of-business records violated the restriction on consolidation or centralization. In contrast to the discrete servers in the possession of the in-business industry members, ATF combined disposition records across industry members on the single, though partitioned, A2K server at NTC. In addition, the records were stored on the single A2K server in a manner that made them more easily searchable than other out-of-business records. Unlike OBRIS, which requires the manual review of potentially relevant records identified through an index, the A2K server within NTC generated records automatically in response to an industry member-specific text query, that is, exact firearm serial number. In addition, according to NTC officials, they could have modified the structure of the NTC server to achieve further aggregation, by programming the system to allow text searches across a broader set of data fields. As a result, ATF could have searched for records by name or other personal identifier.

As explained earlier, our analysis of ATF's aggregation of firearms records turns not on the presence or absence of retail purchaser information, but rather on the extent to which the aggregation of data corresponds to a statutory purpose. ATF's maintenance of out-of-business industry members' disposition records on a single server at NTC was not incident to the implementation of a specific statutory requirement. As discussed above, A2K was designed to allow in-business industry members to respond promptly to ATF trace requests as required by 18 U.S.C. § 923(g)(7) without having to dedicate personnel to this function. Section 923(g)(7), however, has no applicability to FFLs once they discontinue operations. A separate statutory provision, 18 U.S.C. § 923(g)(4), applies to FFLs that permanently discontinue their operations. ATF has long maintained a separate system—formerly the Microfilm Retrieval System and currently OBRIS—to hold the records submitted under that provision, and the disposition records that ATF maintained on the NTC server were among the types of records required to be submitted under section 923(g)(4) for which ATF had created that system. Therefore, we find no statutory underpinning for ATF's maintenance of out-of-business A2K participants' disposition records on the server at NTC.

In response to our inquiries, ATF officials confirmed that the agency's maintenance of the server at NTC was not necessary to carry out a specific statutory function, stating that, in terms of types of information, there was "absolutely no benefit to ATF in keeping the data from out-of-business A2K servers." They explained that the only benefit of keeping the data from these servers was that it was "quicker to locate" disposition

information on the server using the FFL number and serial number. They further stated, however, that it would be inconsistent with the restriction on consolidation or centralization to maintain those records outside of OBRIS. Elaborating on the application of the statutory restriction on consolidation or centralization to the records of A2K participants, ATF officials explained:

Our implementation of A2K included strict security protocols to limit ATF access to only that information to which it is statutorily required, e.g., the next step in the distribution of the traced firearm. That is, ATF would simply have access to the same information it could obtain by calling the participating FFL. However, that calculus is altered when an FFL ceases participation in A2K. At that point, that FFL's records become just like any other FFL records and, as such, must be stored in the same manner. Otherwise, records which were formerly accessible on a discrete basis under A2K would be readily accessible in a database which would, in our opinion based on the 1996 GAO Report, violate the appropriation rider. Our decision, therefore, was to ensure that A2K records have the same character and are retrievable in the same manner as any other out-of-business records.

In addition to removing all data from the A2K out-of-business records server, ATF officials reported that, going forward, the agency plans to convert records of A2K participants that go out of business directly into OBRIS images. However, they said, when such records are received by out-of-business FFLs, the time frame for converting the records into OBRIS images will depend on the backlog of electronic records awaiting conversion.

Similarly, ATF officials told us that they had anticipated that A2K participants would submit acquisition and disposition records together, consistent with the format provided for in ATF's regulations, for inclusion in OBRIS. They had not expected that A2K participants would satisfy any part of their statutory responsibility by providing their backup disks to the agency. However, even if industry members' submission of disposition data on the backup disks could be said to be in furtherance of the portion of the statutory requirement pertaining to disposition records, given the existence and successful functioning of OBRIS, we conclude that ATF's maintenance of those records on the NTC server went beyond the purposes of the Gun Control Act of 1968, as amended.

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FRNP

We conclude that FRNP complies with the restriction on consolidation and centralization of firearms records when used as a tool for ATF agents in connection with an ATF criminal investigation. However, ATF's use of

FRNP for Criminal  
Investigations

FRNP to maintain information on firearms identified during regulatory inspections of FFLs under the Southwest Border Secondary Market Weapons of Choice Program (SWBWOC), as discussed below, was a violation of the restriction.

Under section 599A of title 28, United States Code, ATF is responsible for investigating criminal and regulatory violations of federal firearms laws, and for carrying out any other function related to the investigation of violent crime or domestic terrorism that is delegated to it by the Attorney General. Among other things, ATF is responsible for enforcing federal statutes regarding firearms, including those regarding illegal possession, use, transfer, or trafficking.<sup>36</sup> FRNP, formerly known as the Suspect Gun Program, was established in 1991 within the Firearms Tracing System to provide an investigative service to ATF agents conducting criminal investigations. Through this program, ATF records information—manufacturer, serial number, and type—about firearms that have not yet been recovered by other law enforcement authorities, but are suspected of being involved in criminal activity and are associated with an ATF criminal investigation.<sup>37</sup> When such firearms are recovered, ATF uses the information available through the program to notify the investigating ATF official and to coordinate the release of trace results to other law enforcement authorities with the ongoing ATF investigation.<sup>38</sup>

To enter firearms information into the system, ATF agents investigating potential criminal activity involving firearms must identify the firearms at issue, the number of an open ATF criminal investigation, and at least one of five specified criteria for using the system. The five criteria correspond

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<sup>36</sup>See 18 U.S.C. § 922.

<sup>37</sup>The name of the purchaser or criminal suspect is also recorded, if available.

<sup>38</sup>NTC provided an example of how a firearm may be recorded in FRNP. Specifically, an ATF agent may find a firearm—perhaps while undercover or through an illegal sale from a firearms trafficker—and trace it through NTC. The recovered firearm may be identified as part of a multiple sale with other firearms. The ATF agent may then request that those other firearms be entered into FRNP. If the firearms are later traced, this could assist the ATF agent conducting the original investigation to build a firearms trafficking case.



to bases for ATF investigation.<sup>39</sup> ATF agents also indicate on the submission form whether NTC should release trace results to requesters of a trace for the firearms listed on the form. Where criminal investigations are ongoing and FRNP records are designated as “active,” NTC will notify the investigating ATF agent when the firearm described on the form is recovered. In addition, where the ATF agent has indicated that NTC should release trace information, NTC will notify the ATF agent and the requesting law enforcement agency of trace results. Where the ATF agent has indicated that NTC should not release trace information, the ATF agent is notified of the trace results and determines when that information may be released to the requesting law enforcement agency. For criminal investigations that have been closed, the FRNP record associated with the investigation is labeled “inactive,” although the records may provide investigative leads, according to ATF officials. In such cases, the ATF agent associated with the investigation is not notified of the recovery of the identified firearms or related trace requests, and the release of trace results to requesting law enforcement agencies proceeds without any delay.

ATF is authorized by statute to investigate violations of federal firearms laws. As described above, FRNP is designed for the limited purpose of facilitating ATF’s conduct of specific criminal investigations under its jurisdiction. The inclusion of data in FRNP requires an open ATF investigation of an identified criminal matter, which helps to ensure that the data are maintained only as needed to support this investigative purpose. Further, ATF requires its agents to identify with specificity the firearms relevant to the investigation. As we observed in 1996, the restriction on consolidation or centralization does not preclude all data systems that involve an element of consolidation. Where ATF adheres to the limitations incorporated in the design of FRNP, the maintenance of information through FRNP is incident to ATF’s exercise of its statutory authority to conduct criminal investigations and does not involve the aggregation of data in a manner that goes beyond that purpose. In this respect, we conclude that it does not represent a consolidation or centralization of records in violation of the statutory restriction.

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<sup>39</sup>The five criteria are: “Large Quantities of Firearms Purchased by Individual,” “Firearms Suspected in Trafficking, but not Stolen from an FFL Dealer,” “FFL Dealer Suspected of Performing Firearms Transactions Without Proper Documentation,” “Firearms Purchased by Suspected Straw Purchasers,” and “Other (Explain in Synopsis).”

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Southwest Border Secondary  
Market Weapons of Choice  
Program

In response to our inquiries about FRNP data, ATF officials told us that in 2009, the ATF Chief Counsel had concluded that the agency had violated the appropriations restriction in connection with the system. Specifically, ATF officials told us that the agency had maintained records on the inventories of certain FFLs in violation of the restriction, from 2007 through 2009 under ATF's Southwest Border Secondary Market Weapons of Choice (SWBWOC) Program.<sup>40</sup> We agree with the ATF Chief Counsel's conclusion that its collection and maintenance of information in connection with this program violated the restriction on the consolidation or centralization of firearms records.

In October 2005, the governments of the United States and Mexico instituted a cooperative effort to address surging drug cartel-driven violence in Mexico and along the southwest border of the United States. ATF's main role in this initiative was to develop strategies and programs to stem the illegal trafficking of firearms from the United States to Mexico. ATF determined that used gun sales—referred to in the industry as “secondary market” sales—played a significant role in firearms trafficking to Mexico, particularly for the types of firearms most sought by the Mexican drug cartels, known as “weapons of choice.” Accordingly, in June 2007, the agency developed a protocol to be used during its annual inspections of FFLs in the region engaged primarily in the sale of used firearms.<sup>41</sup> This protocol, known as the SWBWOC Program was intended to enhance ATF's ability to track secondary market sales. It called for ATF investigators to record the serial number and description of all used weapons of choice in each FFL's inventory and those sold or otherwise disposed of during the period covered by the inspection. Under the protocol, the investigators forwarded the information to the relevant ATF field division, which opened a single investigative file for all submissions from the area under its jurisdiction and determined whether any of the weapons had been traced since their last retail sale. After review, the field

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<sup>40</sup>The regional program operated from June 8, 2007 to October 2, 2009.

<sup>41</sup>Section 923(g)(1)(B) of title 18, United States Code, authorizes ATF to conduct inspections of FFLs to ensure compliance with the record-keeping requirements of the Gun Control Act of 1968, as amended, no more than once a year or at any time when the records are related to a firearm that is traced to the FFL. Inspections are also authorized in connection with a criminal investigation. ATF regulations concerning the scope of such inspections indicate that ATF officers are not authorized to seize any records other than those constituting material evidence of a violation of law. See 27 C.F.R. § 478.23(d).

division forwarded the information to FRNP. According to ATF, the Dallas, Houston, and Los Angeles Field Divisions began to submit records from the SWBWOC Program to FRNP in July 2007, and the Phoenix Field Division began to do so in October 2007.

The SWBWOC Program was cancelled on October 2, 2009, following a review by ATF's Office of Chief Counsel of the process by which the secondary market weapons of choice information had been recorded and submitted to FRNP.<sup>42</sup> The Office of Chief Counsel determined that the SWBWOC Program was not consistent with the consolidation or centralization restriction. It advised that information obtained from an FFL about a firearm in and of itself and unaccompanied by purchaser information could not be collected and consolidated absent a specific basis in statute or regulation, or a direct nexus to discrete law enforcement purposes such as a specific criminal investigation. The Office of Chief Counsel found that the collection of information from FFLs under the SWBWOC Program lacked these essential, individualized characteristics.

We agree with ATF's conclusion that the collection and maintenance of firearms information from the SWBWOC Program in FRNP exceeded the permissible scope of the appropriations act restriction. As discussed above, our analysis of ATF's aggregation of firearms data turns not on the presence or absence of retail purchaser information, but rather on the extent to which the aggregation of data corresponds to a statutory purpose. Here, ATF collected and maintained acquisition and disposition data without a statutory foundation based on nothing more than the characteristics of the firearms. The collection and maintenance of information about a category of firearms, "weapons of choice," from a category of FFLs, primarily pawnbrokers, did not pertain to a specific criminal investigation within the scope of ATF's statutory investigative authority. Nor did it fall within the scope of ATF's authority to conduct regulatory inspections. For this reason, we conclude that the program involved the type of aggregation of information contemplated by Congress when it passed the restriction on the consolidation or centralization of firearms records. ATF deleted the related data from FRNP in March 2016.

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<sup>42</sup>According to ATF officials, the SWBWOC Program was not reviewed by the Office of Chief Counsel prior to its initiation in June 2007.

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## Multiple Sales and “Demand Letter 3” Reports

The Gun Control Act of 1968, as amended, requires FFLs to report transactions involving the sales of multiple firearms. Specifically, under 18 U.S.C. § 923(g)(3)(A), an FFL is required to report sales or other dispositions of two or more pistols or revolvers to a non-FFL at one time or during 5 consecutive business days.<sup>43</sup> Under these circumstances, the FFL is required to report information about the firearms, such as type, serial number, manufacturer, and model, and the person acquiring the firearms, such as name, address, ethnicity, race, identification number, and type of identification to ATF. ATF enters data from these reports into the MS portion of its Firearms Tracing System so that it can monitor and deter illegal interstate commerce in pistols and revolvers.<sup>44</sup>

Our 1996 report examined the Multiple Sales System and found that it did not violate the prohibition on the consolidation or centralization of firearms records because the collection and maintenance of records was incident to a specific statutory responsibility. In connection with our current review, we observed the functioning of the present system for reports of multiple sales. We found no changes since 1996 that would suggest a different conclusion with respect to ATF’s compliance with the appropriations act restriction.

As we reported in 1996, a regulatory requirement for FFLs to prepare and provide multiple sales reports to ATF existed before the prohibition on consolidation or centralization of firearms records was enacted in fiscal year 1979<sup>45</sup> and there was no indication in the legislative history that the prohibition was intended to overturn ATF’s existing practices with respect to multiple sales. In addition, we explained that the Firearms Owners’ Protection Act had codified the ATF regulation, affirming the agency’s authority to collect this information.<sup>46</sup> FOPA’s requirement that FFLs send

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<sup>43</sup>These reports are required to be submitted to ATF no later than the close of business on the day that the multiple sale or disposition occurs. 18 U.S.C. § 923(g)(3)(A). The reporting requirement also applies to sales or dispositions of combinations of pistols and revolvers totaling two or more. 27 C.F.R. § 478.126A.

<sup>44</sup>See 40 Fed. Reg. 19,201 (May 2, 1975) (pertaining to a multiple sales regulation that predated 18 U.S.C. § 923(g)(3)(A)).

<sup>45</sup>See 40 Fed. Reg. 19,201, 19,201-19,202 (May 2, 1975) (codified at 27 C.F.R. §§ 178.11, 178.126a).

<sup>46</sup>Pub. L. No. 99-308, § 103, 100 Stat. 449, 455 (1986).

the reports “to the office specified” on an ATF form suggested that ATF could specify that the information be sent to a central location.

Our review of FOPA’s legislative history confirmed our interpretation of the statute. When considering the passage of FOPA, Congress clearly considered placing constraints on ATF’s maintenance of multiple sales reports, but declined to do so. Specifically, the Senate-passed version of FOPA prohibited the Secretary of the Treasury from maintaining multiple sales reports at a centralized location and from entering them into a computer for storage or retrieval.<sup>47</sup> This provision was not included in the version of the bill that was ultimately passed. In light of the above, we reach the same conclusion as we did in 1996 and find that ATF’s use of MS complies with the restriction on the consolidation or centralization of firearms records.

In addition, ATF has collected and maintained information on the multiple sales of firearms under a separate authority, 18 U.S.C. § 923(g)(5)(A). Section 923(g)(5)(A) authorizes the Attorney General to require FFLs to submit information that they are required to maintain under the Gun Control Act of 1968, as amended.<sup>48</sup> This provision was also included in FOPA.<sup>49</sup> Relying on this authority, ATF issues “demand letters” requiring FFLs to provide ATF with specific information. In 2011, ATF issued a demand letter requiring certain FFLs in Arizona, California, New Mexico, and Texas to submit reports of multiple sales or other dispositions of particular types of semiautomatic rifles to non-FFLs (referred to as “Demand Letter 3” reports).<sup>50</sup> These reports are submitted to ATF and included in the MS portion of its Firearms Tracing System. According to ATF, the information was intended to assist in its efforts to investigate and

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<sup>47</sup>S. 49, 99th Cong. (1985).

<sup>48</sup>Under the statute, an FFL must, “when required by letter issued by the Attorney General . . . submit on a form specified by the Attorney General, for periods and at the times specified in such letter, all record information required to be kept by this chapter.” See 27 C.F.R. § 478.126.

<sup>49</sup>Pub. L. No. 99-308, § 103, 100 Stat. 449, 455 (1986).

<sup>50</sup>Specifically, ATF required licensed dealers and pawnbrokers to prepare reports on sales or other dispositions of two or more semiautomatic rifles capable of accepting a detachable magazine and with a caliber greater than .22 at one time or during any 5 consecutive business days.

combat the illegal movement of firearms along and across the southwest border.

Several FFLs challenged the legality of ATF's demand letter, asserting, among other things, that it would create a national firearms registry in violation of the fiscal year 2012 appropriations act restriction. In each of the cases, the court placed ATF's initiative in its statutory context and held that the appropriations act did not prohibit ATF's issuance of the demand letter.<sup>51</sup> Similar to our 1996 analyses of the Out-of-Business Records and Multiple Sales Systems, the United States Court of Appeals for the Fifth Circuit examined the enactment of ATF's authority to issue demand letters in relation to the appropriations act restriction.<sup>52</sup> The court observed that ATF's demand letter authority was enacted as part of FOPA and that because FOPA "clearly contemplate[d] ATF's collection of some firearms records," the appropriations provision did not prohibit "any collection of firearms transaction records."<sup>53</sup> In this regard, the court further noted that the plain meaning of "consolidating or centralizing" did not prohibit the collection of a limited amount of information.<sup>54</sup>

Other courts also emphasized that the ATF 2011 demand letter required FFLs to provide only a limited subset of the information that they were required to maintain, as opposed to the substantial amount of information that they believed would characterize a "consolidation or centralization." For example, the Court of Appeals for the District of Columbia Circuit enumerated the limitations on ATF's 2011 collection of information, noting that it applied to (1) FFLs in four states; (2) who are licensed dealers and pawnbrokers; (3) and who sell two or more rifles of a specific type; (4) to the same person; (5) in a 5-business-day period.<sup>55</sup> The court found that

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<sup>51</sup>Ron Peterson Firearms, LLC v. Jones, 760 F.3d 1147 (10th Cir. 2014); 10 Ring Precision, Inc. v. Jones, 722 F.3d 711 (5th Cir. 2013); Nat'l Shooting Sports Found., Inc. v. Jones, 716 F.3d 200 (D.C. Cir. 2013). Earlier decisions similarly upheld prior ATF information collection initiatives under 18 U.S.C. § 923(g)(5)(A). Blaustein & Reich, Inc. v. Buckles, 365 F.3d 281 (4th Cir. 2004); RSM, Inc. v. Buckles, 254 F.3d 61 (4th Cir. 2001).

<sup>52</sup>10 Ring Precision, Inc. v. Jones, 722 F.3d 711, 722 (5th Cir. 2013).

<sup>53</sup>*Id.* at 722. The court cited the canon of statutory construction that a statute should be interpreted so as not to render one part inoperative.

<sup>54</sup>*Id.*

<sup>55</sup>Nat'l Shooting Sports Found., Inc. v. Jones, 716 F.3d 200, 213 (D.C. Cir. 2013).

because ATF sent the demand letter to a limited number of FFLs nationwide and required information on only a small number of transactions, “the . . . demand letter does not come close to creating a ‘national firearms registry.’”<sup>56</sup> In light of the court decisions regarding ATF’s exercise of its statutory authority in this context, we conclude that the Demand Letter 3 initiative does not violate the restriction on the consolidation or centralization of firearms records.

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## Conclusion

Two of the data systems under review, OBRIS and MS, comply with the provision in ATF’s fiscal year 2012 appropriation prohibiting the use of funds for the consolidation or centralization of firearms records. ATF collects and maintains firearms transaction information in each system incident to the implementation of specific statutory authority and it does not exceed those statutory purposes. ATF’s A2K system for in-business FFLs and its maintenance of certain firearms information pertinent to criminal investigations in FRNP are likewise consistent with the appropriations act restriction. However, ATF’s collection and maintenance of out-of-business A2K records on the server at NTC violated the restriction, as did its collection and maintenance of data from certain FFLs as part of the SWBWOC Program. In both cases, ATF’s aggregation of information was not supported by any statutory purpose.

ATF’s failure to comply with the prohibition on the consolidation or centralization of firearms records also violated the Antideficiency Act.<sup>57</sup> The Antideficiency Act prohibits making or authorizing an expenditure or obligation that exceeds available budget authority.<sup>58</sup> As a result of the statutory prohibition, ATF had no appropriation available for the salaries or administrative expenses of consolidating or centralizing records, or portions of records, of the acquisition and disposition of firearms in

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<sup>56</sup>*Id.* at 214.

<sup>57</sup>31 U.S.C. § 1341(a).

<sup>58</sup>We have consistently concluded that the use of appropriated funds for prohibited purposes violates the Antideficiency Act, because no funds are available for the purpose. See, e.g., B-325248, Sept. 9, 2014 (appropriations used in violation of a grassroots lobbying prohibition); B-321982, Oct. 11, 2011 (appropriations used in violation of statutory restriction against engaging in bilateral activities with China or Chinese-owned companies); B-302710, May 19, 2004 (appropriations used in violation of prohibition against publicity or propaganda).

connection with the SWBWOC Program<sup>59</sup> or A2K for out-of-business records. The Antideficiency Act requires that the agency head “shall report immediately to the President and Congress all relevant facts and a statement of actions taken.”<sup>60</sup> In addition, the agency must send a copy of the report to the Comptroller General on the same date it transmits the report to the President and Congress.<sup>61</sup>

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<sup>59</sup>We have no record of GAO receiving an Antideficiency Act report from ATF after the Chief Counsel’s 2009 determination that the agency had violated the restriction on the consolidation or centralization of records.

<sup>60</sup>31 U.S.C. § 1351.

<sup>61</sup>*Id.* The Office of Management and Budget (OMB) has published requirements for executive agencies for reporting violations. OMB, *Preparation, Submission, and Execution of the Budget*, [OMB Circular No. A-11](#), §§ 145, 145.8 (Washington, D.C.: June 2015). OMB has advised executive agencies to report violations found by GAO. The Circular further provides that “[i]f the agency does not agree that a violation has occurred, the report to the President, Congress, and the Comptroller General will explain the agency’s position.”



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# Appendix VIII: GAO Contacts and Staff Acknowledgments

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## GAO Contacts

Diana C. Maurer, (202) 512-9627 or [maurerd@gao.gov](mailto:maurerd@gao.gov)  
Helen T. Desaulniers, (202) 512-4740 or [desaulniersh@gao.gov](mailto:desaulniersh@gao.gov)

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## Staff Acknowledgments

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# Appendix IX: Accessible Data

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## Accessible Text

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### Accessible Text for Figure 1: Possible Scenario of a Firearm's Purchase, Use in a Crime, and Law Enforcement Recovery

- **Individual purchases firearm:** Individual purchases firearm from federal firearms licensee (FFL). FFL maintains documentation on firearm, purchase, and purchaser.
- **Individual commits crime with firearm**
- **Law enforcement agency recovers firearm at crime scene**
- **Law enforcement agency submits firearm for tracing:** Law enforcement agency submits firearms information to the National Tracing Center for tracing to obtain the name of the individual who purchased the firearm from the FFL.

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