



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

**Review of the Bureau of Alcohol, Tobacco,
Firearms and Explosives'
Implementation of the Safe Explosives Act
I-2005-005**

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EXECUTIVE DIGEST

In this evaluation, the Office of the Inspector General (OIG) reviewed the Bureau of Alcohol, Tobacco, Firearms and Explosives' (ATF) implementation of the Safe Explosives Act (SEA), which was enacted on November 25, 2002.¹ The ATF is the chief enforcer of explosives laws and regulations in the United States, and is responsible for licensing and regulating explosives manufacturers, importers, dealers, and users. The ATF is also responsible for overseeing most explosives storage. This OIG evaluation examined the ATF's license and permit operations, including how it conducts background checks before authorizing individuals to possess explosives. We also reviewed the ATF's plans to establish the National Explosives Licensing Center and the ATF National Laboratory's plans to collect and catalog samples of explosives as authorized by the SEA.

Explosives are an integral component of the nation's economy. More than 5 billion pounds of explosives are used each year in the United States for mining, construction and demolition projects, pyrotechnics, medicine (such as in heart medication and to break up kidney stones), automobile manufacturing (to inflate airbags), and numerous other industries.

The SEA was implemented to enhance public safety by expanding the ATF's licensing authority to include the intrastate manufacture, purchase, and use of explosives.² The SEA also expanded the categories of "prohibited persons" to be denied access to explosives from four to seven. The new prohibited persons categories are aliens (with limited exceptions), persons who have been dishonorably discharged from the military, and individuals who have renounced their United States citizenship. These categories were added to the pre-existing categories of prohibited persons that included felons, fugitives, users of and persons addicted to controlled substances, and persons who have been adjudicated mentally defective or committed to mental institutions.

In addition, the SEA required that proprietors, owners, and corporate officers of companies that manufacture, sell, or import

¹ P.L. 107-296, Title XI, Subtitle C of the Homeland Security Act of 2002.

² The ATF issues 23 different types of licenses and permits governing the manufacture, importation, sale, and use of explosives.

explosives submit fingerprint cards and photographs to the ATF with their license applications. It also mandated that the ATF inspect licensees' manufacturing and storage facilities at least once every three years. Finally, the SEA required the ATF to conduct background checks on all licensees, as well as all employees who have access to explosives as part of their work (Employee Possessors).³ In order to identify all prohibited persons, the ATF entered into an agreement with the Federal Bureau of Investigation (FBI) to perform these background checks.⁴

The SEA did not change the explosives types subject to the ATF's licensing authority, as defined in 18 U.S.C. § 841, and it did not increase the number of explosives under the ATF's control. Most notably, it did not extend the ATF's regulatory authority over ammonium nitrate or other common chemicals that, when combined, become explosives.

RESULTS IN BRIEF

Our review found critical deficiencies in the ATF's implementation of the background check and clearance process that prevented the agency from ensuring that prohibited persons are denied access to explosives. Our comparison of ATF and FBI data found no record that the ATF requested FBI background checks on 59 of 683 employees of explosive licensees (9 percent) whose ATF records we examined. We also determined that the ATF had failed to complete the background check process for over half (655 of 1,157) of the individuals identified by the FBI as possible prohibited persons. Consequently, these potentially prohibited persons were still authorized to access explosives. Through additional research, we found that several of these individuals had serious criminal records. For example, one of the individuals was a previously convicted felon who had been sentenced by a state court in late 2003 to 33 months' incarceration for felony theft.

We also found that the ATF frequently failed to complete the clearance adjudication process or enter final determinations of Employee Possessors' status into its Federal Licensing System (FLS). As a result,

³ Before the SEA was enacted, proprietors, owners, and corporate officers – generally referred to as “Responsible Persons” – were required to submit to background checks before being granted a license or a permit. The new prohibited persons categories also apply to these individuals.

⁴ This partnership was established with the approval of the Department of Justice, Office of Legal Policy, which wrote that “... only a check conducted [by the FBI] would reveal prohibiting information regarding mental health prohibitions, dishonorable discharges, persons who have renounced their citizenship, and illegal aliens.”

the clearance status of 31 percent of the Employee Possessors we reviewed were listed as “pending” for an average of 299 days. Moreover, the ATF did not complete investigations for almost 300 individuals for whom the FBI could not resolve issues found through its National Instant Criminal Background Check System (NICS).

In addition, the ATF had not timely adjudicated requests for relief from persons who were identified as prohibited persons and denied access to explosives. Further, the ATF Inspectors responsible for inspecting explosives licensees had not received adequate training in explosives products and operations, which resulted in inconsistent regulatory enforcement. Finally, almost two years after enactment of the SEA, we found that the ATF had begun only recently to plan for the collection and cataloging of samples of explosives at the ATF National Laboratory or to establish a National Explosives Licensing Center.⁵

We explain these findings in greater detail in the sections that follow.

The ATF frequently failed to complete the background check and clearance process to ensure that prohibited persons are denied authorization to possess explosives.

We found critical deficiencies in several aspects of the background check and clearance process implemented by the ATF to carry out the licensing requirements of the SEA. As detailed below, these deficiencies included not requesting background checks on all Employee Possessors, not acting when the FBI reported finding prohibiting information, and not completing the investigations and adjudication of clearances. Because of these deficiencies, the ATF has not ensured that prohibited persons are denied access to explosives.

The ATF did not request FBI background checks on all employees of license applicants. We compared FBI NICS data with ATF FLS data to determine whether the ATF had requested background checks on all Employee Possessors. We found that at least 59 of the 683 individuals in our sample (9 percent) were not listed in the FBI’s records as having had a background check. Of those 59, the ATF’s FLS records indicated that

⁵ The SEA did not specifically mandate that the ATF establish a National Explosives Licensing Center. The authority for the National Explosive Licensing Center is contained in a report by the House Appropriations Committee (House Report 108-401).

34 were in a pending status and 25 had been cleared to access explosives.

The ATF frequently failed to make final determinations on employee clearance status based on FBI background checks and other information sources. Once the FBI has completed background checks on Employee Possessors, the ATF's National Licensing Center (NLC) retrieves the results and completes the adjudication process to determine whether Employee Possessors should have access to explosives.⁶ Until the adjudications are completed, cases are categorized as "pending" in the NLC's system.

As of September 2004, the ATF reported that 25,181 of the 56,589 Employee Possessor records (45 percent) in the NLC's system were "pending." Because Employee Possessors may have multiple records in the FLS, we examined a sample of 683 individual Employee Possessor records.⁷ We found that 31 percent (211 of 683) of the Employee Possessors had no adjudication result entered in any of their FLS records, indicating that the ATF had not made a final determination as to the clearance status of those individuals. These Employee Possessors' clearances had remained in a "pending" status for an average of 299 days.

After being presented with the OIG's analysis of the large number of "pending" cases in November 2004, the Chief of the NLC termed the problem "a major weakness" in the explosives licensing process and began an initiative to determine the full magnitude of the discrepancy. The NLC selected an initial non-statistical sample of 52 names of individuals identified by the FBI as possible prohibited persons, and checked their clearance status in the ATF's FLS. The NLC found major discrepancies between the ATF's and FBI's records: 26 were listed in the FLS as being "denied" access to explosives, 20 were listed as "pending," 4 were listed as cleared, 1 was listed as "denied" in 1 FLS record and "pending" in another record, and 1 did not appear in FLS at all. Upon reviewing these results, the NLC could not explain the discrepancies and, therefore, began reviewing a larger sample of FBI "denied" individuals.

⁶ To retrieve the results of an FBI background check, employees at the National Licensing Center must log into an FBI database and input the results of the check into the ATF's licensing database.

⁷ The sample size was actually 1,000 FLS records, which represented 683 individual Employee Possessors.

The ATF did not complete adjudications for individuals identified by the FBI as possible prohibited persons. According to ATF data, as of August 2004, only 502 Employee Possessor applicants had been denied the authority to possess explosives. However, the FBI had actually identified 1,157 possible prohibited persons among the Employee Possessors submitted by the ATF. The other 655 individuals – over half of the possible prohibited persons identified by the FBI – continue to have the authority to possess explosives because their background checks remained in a “pending” status. Our research found that some of these individuals had significant criminal records, including, for example:

- A convicted felon currently serving a 3-year probation sentence for illegally leaving a “halfway house” prior to being formally discharged.
- An individual who had been arrested over 20 times and who had at least three felony convictions (two for damaging property and one for auto theft) since 1992. Since the FBI background check was conducted, the individual began serving a 33-month sentence with the Arizona Department of Corrections as a result of his latest felony theft conviction.

Because the ATF had not denied authorization to possess explosives to these individuals but continued to show them as pending in FLS, they continued to have ATF authorization to access explosives for as long as 14 months after being identified as a possibly prohibited person by the FBI.

The ATF does not consistently complete the background check process for individuals with inconclusive NICS checks. When the NICS check identifies a possible prohibiting factor in an individual’s background that the FBI cannot confirm (e.g., due to unavailability of court records), the case is referred back to the ATF for completion of the investigation. The ATF’s procedures require that the case be reviewed and, if necessary, assigned to the appropriate ATF Field Division (based on the location of the individual) to determine whether the individual should be prohibited from possessing explosives. We found that the ATF had not consistently followed up and completed these cases.

According to the ATF data, 297 individuals for whom the FBI could not complete background checks to confirm prohibiting factors remained in pending status and continued to have the authority to possess explosives. On average, the background checks for these individuals had

been pending at the ATF for 363 days. According to ATF officials, as of January 2005 none of the 297 cases had yet been referred to an ATF field office for investigation.

The ATF requested background checks on individuals who did not appear in the ATF's licensing database. As part of our review to determine whether the ATF requested background checks on employees of explosives license applicants, we reviewed and compared ATF and FBI records. In the course of that review, we found instances in which the NLC's NICS user identification number had been used to conduct background checks on persons who did not appear as Employee Possessor applicants in FLS. In response to our inquiries, the FBI provided us a total of 893 records of Employee Possessor background checks. Of those, we found that the individuals on whom 21 of the 893 background checks (2 percent) were conducted could not be found in any of the ATF's FLS records. This could have occurred because the records were never entered into the FLS by the NLC, because an NLC employee misused their access to check individuals not involved with explosives, or because the NLC's on-line access (through a digital certificate issued by the FBI) has been compromised. The NICS system is intended only for legitimate uses, including background checks of explosives license applicants and their employees. If these checks were not initiated on explosives license applicants or their employees, it would be an abuse of the NICS system. At the least, the discrepancy indicates that records on Employee Possessors are missing from FLS.

Many explosives licensees have not reported hiring any new Employee Possessors.

The SEA requires that explosives licensees report all new Employee Possessors to the ATF within 30 days of their being hired so that the ATF can conduct the required background checks. Under the ATF procedures, Employers submitting updated personnel rosters are to be provided with an amended "Notice of Clearance" to inform the employer of the results of the background checks. However, according to the ATF, as of February 11, 2005, it had issued only 920 amended Notices of Clearance to the more than 9,500 employers that it has issued licenses to since implementation of the SEA. The limited number of amended Notices of Clearances issued by the ATF indicated that few explosives licensees have reported new employees to the ATF.

Further, we found that some of the 920 amended Notices of Clearance were issued solely to correct mailing address errors while some of the Notices were duplicates. Therefore, we estimated that the number

of actual amended Notices of Clearance issued in response to reports of new employees was, at most, about 700. This indicates that less than 8 percent of the 9,510 explosives licensees covered by the SEA had reported any new hires to the ATF between May 2003 and January 2005. Moreover, we examined records related to the 50 licensees with the most reported Employee Possessors and found that 24 of the licensees had not reported any new Employee Possessors to the ATF. These licensees employed a total of 13,380 Employee Possessors, according to their original applications. The lack of any reports of new Employee Possessors indicates that many companies were not notifying the ATF of personnel changes or that NLC Examiners were not issuing amended Notices of Clearance. We spoke with Examiners who confirmed that they were not receiving updated personnel rosters from companies.

If employers fail to report new employees, potentially prohibited persons could have access to explosives until the next renewal or compliance inspection, which may not occur for up to three years.

ATF information systems are ineffective for managing the explosives licensing functions mandated by the SEA.

The deficiencies noted above occurred, in part, because the ATF's FLS contains significant structural deficiencies that limit its utility for monitoring the licensing process and for providing ATF management with information on critical aspects of licensing operations. We determined that because of structural deficiencies, the system cannot be used to ensure that FBI background checks are conducted on all Employee Possessor applicants during the licensing process and cannot be used to properly manage and report on the clearance status of employees of explosives licensees. In addition to structural deficiencies, we found numerous instances of inaccurate, incomplete, and missing data in the FLS database. Combined, these deficiencies prevent timely and effective management of some of the most basic activities related to the ATF's explosives oversight responsibilities.

The ATF does not timely adjudicate requests from individuals seeking reconsideration of prohibited person status.

Individuals prohibited from possessing explosives can apply to the ATF's Explosives Relief of Disabilities (ROD) Section for "relief" from federal regulations (*i.e.*, an exception that will allow them to possess explosives notwithstanding the prohibiting factors). Although the ATF has not completed regulations to govern the adjudication of relief applications, an ATF draft order states that relief applications should be

adjudicated within 74 days. As of September 1, 2004, 453 individuals had applied for relief, of whom 299 (66 percent) had been adjudicated by the ATF. We found that the ATF took, on average, more than 121 days to adjudicate those cases.

Delays in adjudicating relief applications are problematic for individuals who work in the explosives industry, as well as their employers. For example, on 13 occasions, ATF Field Divisions took more than six months to process an appeal and grant relief to individuals who applied for ROD.

Inadequate training for ATF Inspectors has resulted in a lack of explosives product knowledge and inconsistent regulatory enforcement.

After the SEA was enacted, the ATF expanded its Advanced Explosives Training Course for Inspectors from seven to ten days and enhanced the training to include more explosives product identification. The ATF told us that it intended to have all Inspectors attend the enhanced training, including 247 Inspectors who took the course before it was revised. However, the ATF plans to conduct only three classes per year, with 30 Inspectors in each class. At that rate, it will take seven years before all ATF Inspectors have attended the revised course. It will take at least three years to send those ATF Inspectors who have never attended Advanced Explosives Training to the course.

Inspectors and industry members we spoke with stated that the Inspectors need better training. For example, one Inspector told us that she learns about new explosives products from licensees, a comment that was mirrored by several industry representatives who told us that they do not feel Inspectors are adequately trained to inspect various types of explosives. ATF officials, Inspectors, and industry members also cited problems with the consistency of Inspectors' interpretations of ATF regulations that they attributed to the lack of Inspector training. For example, one licensee that operates nationwide stated that because ATF Inspectors conduct inspections and interpret regulations differently at various locations, he cannot develop a consistent corporate policy to comply with ATF regulations. Another industry member complained that an ATF Inspector cited his company for storing explosives too close to an "inhabited building" (a garage), although prior Inspectors over almost 20 years had never categorized the structure as an "inhabited building." Whether the change in the category was correct (either because the latest Inspector noted changed circumstances or the prior Inspectors had been mistaken), the licensee told us that the reasons for the new

determination had not been made clear to him. According to ATF Inspectors we spoke with, calculating the quantities of explosives allowed in storage magazines was the issue that most frequently caused them difficulty when conducting explosives inspections.

ATF inspection procedures are inadequate to ensure that prohibited persons are identified during compliance inspections.

During our review, we determined that ATF procedures are not adequate to ensure that Inspectors check for Employee Possessors who may have become prohibited since their initial ATF background check. For example, Employee Possessors may have been convicted of a felony or dishonorably discharged from the military since their initial background checks. Inspectors are instructed to conduct “random” background checks on Employee Possessors during compliance inspections, but we found that the ATF work plan does not specify how the random sample is to be selected or establish a minimum number of checks to be conducted. Further, the compliance inspection work plan does not require that Inspectors query NICS to conduct the rechecks. Instead, Inspectors are instructed to conduct the rechecks using the Treasury Enforcement Communications System and the National Crime Information Center (NCIC) systems. However, these systems are not as comprehensive as the NICS database queried by NLC personnel to conduct the original background checks.⁸

At the time of our review, the ATF had not determined whether to conduct NICS background checks on all Employee Possessors when explosives licenses or permits are renewed or whether to require Employee Possessors to submit updated application renewal forms. If the ATF chooses not to recheck all Employee Possessors during renewal inspections, but uses a random sample approach as with compliance inspections, some Employee Possessors may never be rechecked.

⁸ In addition to NCIC information, the NICS database contains information on individuals dishonorably discharged by the Department of Defense, individuals adjudicated mentally defective, and individuals who have renounced their United States citizenship.

The ATF National Laboratory has made little progress in implementing the provisions of the SEA that authorized the collection and cataloging of samples of explosives.

We found that the ATF National Laboratory had only recently developed a systematic approach to collect, analyze, and catalog samples of explosives. The SEA granted the ATF the authority to collect samples of explosives and ammonium nitrate from manufacturers and importers. The samples were to be used to create libraries of information to support investigations of explosives incidents. During a June 2002 congressional hearing, the Acting ATF Director testified that a library of explosives information “is essential to ATF’s ability to prevent and solve bombings and to trace explosive materials used in terrorist activities and other violent crimes by matching residue with the manufacturers’ samples.”⁹

However, during our review, we determined that the ATF had only used its authority to collect explosives samples one time – to collect a model rocket motor. The ATF had not collected any samples of ammonium nitrate. Moreover, the National Laboratory had only recently developed a systematic approach for collecting, analyzing, and cataloging samples of explosives.

Subsequent to the completion of our field work, in October 2004, the National Laboratory began the planning process for constructing an explosives storage facility, the first step toward enabling the laboratory to collect and analyze explosives. Planning for an electronic database to house explosives information collected by the laboratory began in late August 2004. According to the National Laboratory’s operating plan, the ATF plans to formalize protocols for gathering information from explosives manufacturers by June 2005 and, by July 2005, develop a prototype of the explosives database.

ATF efforts to establish a National Explosives Licensing Center.

In the ATF’s fiscal year 2004 appropriation, Congress authorized the ATF to create the National Explosives Licensing Center (NELC), stating: “The conference agreement includes ... \$4,000,000 to upgrade databases and systems, space alterations, and other costs related to creating the National Explosives Licensing Center ... at the Bureau of

⁹ Testimony before the House of the Representatives, Committee on the Judiciary, Subcommittee on Crime, Terrorism, and Homeland Security, hearing on H.R. 4864, the Anti-Terrorism Explosives Act of 2002, June 11, 2002.

Alcohol, Tobacco, Firearms and Explosives National Tracing Center.”¹⁰ The ATF selected a Chief for the NELC in October 2003 and in July 2004 the NLC began transferring its explosives licensing operations for new applications – not renewal applications – to the NELC on a state-by-state basis. As of October 2004, the NLC had transferred these operations for 32 states.

In September 2004, the Chief of the NELC told us that he expects the NELC to be fully operational by August 2005. However, as of September 2004, the ATF had not developed any detailed plans, timelines, or reports for accomplishing the transfer of the remaining explosives licensing operations to the NELC. In January 2005, ATF Headquarters officials stated that the NELC was developing detailed plans for the full transfer of licensing operations, but did not provide a copy for our review. We discussed issues related to the establishment of the NELC with management staff at the NLC because they carry out firearms licensing functions within the ATF and have been handling explosives licensing functions pending the establishment of the NELC. They stated that, in their opinion, the NELC is unprepared to handle issues beyond basic licensing.

Additional issues reviewed by the OIG.

In conducting this review, we identified several additional issues related to the regulation and safeguarding of explosives in the United States that, while not addressed in the SEA, nevertheless are relevant to public safety. They include the following:

- The lack of ATF authority to regulate ammonium nitrate and some commonly used explosives, and
- The lack of ATF authority to inspect all government-owned explosives storage facilities.

With regard to government-owned explosives storage facilities, federal, state, and local government agencies are exempt from ATF licensing and permitting requirements, although most are required by law to store explosives in accordance with federal regulations. Therefore, according to ATF Headquarters officials, the ATF only inspects government-owned explosives storage facilities when the owners of these magazines invite the ATF to perform inspections.

¹⁰ House Report 108-401.

CONCLUSIONS AND RECOMMENDATIONS

We believe that immediate action is required to correct the critical deficiencies in the ATF's implementation of the SEA identified in this report to ensure that prohibited persons do not have access to explosives. Because of the ATF's inability to ensure that background checks on all Employee Possessor applicants were conducted, and its failure to complete the background check process on others, at least 655 possible prohibited persons are currently allowed access to explosives. This represents a significant risk to public safety.

The ATF also must take steps to improve the consistency and effectiveness of its oversight activities so that explosives workers who may have become prohibited persons are identified during ATF inspections. In addition, ATF Inspectors must be adequately trained in explosives products and operations to carry out their oversight of the explosives industry effectively and consistently. The ATF also needs to direct the completion of plans for establishing an explosives licensing center and to implement a process for collecting and cataloging explosives at the ATF National Laboratory to assist national and local law enforcement during investigations of the illegal use of explosives.

In our report, we make 10 recommendations to help the ATF improve the implementation of the Safe Explosives Act and more effectively regulate explosives within the United States:

1. Implement procedures to ensure that all Employee Possessor applicants receive a thorough background check.
2. Establish milestones and controls to ensure that Employee Possessor applicants do not remain in a "pending" status in the FLS for extended periods. As an immediate action, NLC management should regularly generate an aging report for pending cases, setting priorities for resolving those cases that have been in a pending status for more than 45 days.
3. Implement procedures to ensure the integrity, completeness, and accuracy of the Employee Possessor information in the FLS. To correct the current data problems, the ATF should conduct a 100 percent cross-match of the names of individuals issued licenses and permits by the ATF with the names of individuals on whom the FBI conducted NICS checks, and then:

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- Conduct background checks on any individuals contained in the ATF licensing system but not confirmed as having been checked by the FBI.
 - Immediately recheck the license status of all individuals determined by the FBI to be prohibited persons and ensure those individuals are denied access to explosives.
 - For any individual that the FBI has recorded a NICS background check under the NLC’s NICS user identification number, but for whom the ATF has no record in its licensing system, determine whether the person is involved in the explosives industry. If the person is, enter the individual into the ATF’s licensing system, and, if not, conduct an investigation to determine who may have performed the background check and why.
4. Implement quality control procedures, data entry protocols, and system modifications to ensure FLS data accuracy, including:
 - Modification of the FLS to ensure that an Employee Possessor has only one status, system-wide, no matter how many licenses or permits are associated with the individual.
 - Modification of the FLS to prevent the entry of illogical or incomplete data.
 5. Use existing NLC Employee Possessor information to provide a monthly listing to each Field Division of the licensees in their jurisdiction, the number of Employee Possessors, and the date the company last reported an Employee Possessor to determine the most egregious cases of licensees who have failed to notify the ATF of new hires.
 6. Take action to ensure that there is no unauthorized or inappropriate use of the FBI NICS E-Check system. As an immediate action, the ATF should cancel the NLC’s NICS user identification number and assign unique user identification numbers to each individual responsible for conducting the checks.
 7. Improve the consistency of regulatory determinations by designating a single point of contact at ATF Headquarters for Inspectors and explosives industry members. The point of contact

should maintain a history of regulatory inquiries and post frequently requested information on the ATF's website.

8. Examine alternatives for speeding the delivery of the ATF's Advanced Explosives Training course to all Inspectors, and develop a curriculum to build explosives expertise within the ATF's Inspector workforce.
9. Develop a detailed timeline for accomplishing the actions necessary to complete the implementation the National Explosives Licensing Center in Martinsburg, West Virginia, including the implementation of changes to the licensing and background check processes, the adjudication process for Employee Possessors, and the data systems that will support these processes.
10. Develop comprehensive plans, funding requests, industry notices, proposed regulations, and other necessary documents to implement the authority granted under the SEA to collect and catalog samples of explosives at the ATF National Laboratory.

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LIST OF ACRONYMS

AEXIS	Arson and Explosives Information System
ATF	Bureau of Alcohol, Tobacco, Firearms and Explosives
DOL	Department of Labor
DOT	Department of Transportation
EPQ	Employee Possessor Questionnaire
FBI	Federal Bureau of Investigation
FLS	Federal Licensing System
FY	Fiscal Year
GAO	Government Accountability Office
NCIC	National Crime Information Center
NEIT	Northeast Inspection Team
NELC	National Explosives Licensing Center
NICS	National Instant Background Check System
NLC	National Licensing Center
NTN	NICS Transaction Number
OIG	Office of the Inspector General
OLC	Office of Legal Counsel
OLP	Office of Legal Policy
ROD	Relief of Disabilities
SEA	Safe Explosives Act
TECS	Treasury Enforcement Communications System
TSA	Transportation Security Administration
TTB	Alcohol and Tobacco Tax and Trade Bureau

INTRODUCTION

Purpose

The purpose of this evaluation was to assess the Bureau of Alcohol, Tobacco, Firearms and Explosives' (ATF) implementation of the Safe Explosives Act (SEA).¹¹ The SEA was enacted in November 2002 to enhance public safety by expanding the ATF's licensing authority to include the intrastate manufacture, purchase, and use of explosives; by expanding the categories of "prohibited persons" to be denied access to explosives; by requiring background checks on all individuals who have access to explosives; and by mandating triennial inspections of licensees' manufacturing and storage facilities.

Background

Explosives are an integral component of the nation's economy. More than 5.5 billion pounds of explosives are used each year in the United States in a variety of industries and for a variety of purposes, such as aerospace (for ejector seats and separation devices for rocket stages); coal mining; avalanche control; construction; demolition; excavation for foundations and underwater channels; fire suppression systems; law enforcement (exploding dye capsules); metalworking; pyrotechnics; medicine (heart medication and treating kidney and gall stones), manufacturing (inflating automobile airbags and creating synthetic diamonds); and numerous other applications.

Coal mining uses 68 percent of the total amount of explosives sold in the United States. Quarrying and non-metal mining is the second-largest explosives consuming industry, accounting for 13 percent of total explosives sales; metal mining, 8 percent; construction, 8 percent; and miscellaneous uses, 3 percent. West Virginia, Kentucky, Wyoming, Indiana, Virginia, and Pennsylvania, in descending order, are the largest explosives-consuming states, accounting for a combined total of 58 percent of domestic sales.¹²

Explosives are also used illegally. According to data provided by the ATF's Arson and Explosives National Repository, over the past

¹¹ P.L. 107-296, Title XI, Subtitle C of the Homeland Security Act of 2002.

¹² *Geological Survey Minerals Yearbook—2002, Explosive*. (Percentages add to 101 percent due to rounding.)

3 years, the ATF received about 700 reports of domestic bombing incidents. (See Appendix I for more information on domestic and foreign bombing incidents.)

The ATF is the chief enforcer of explosives laws and regulations and is responsible for licensing and regulating explosives manufacturers, importers, dealers, and users. The ATF also is responsible for overseeing most regulations involving explosives storage.¹³ The ATF's National Licensing Center in Atlanta, Georgia, oversees the receipt, processing, granting, or denial of explosives licenses and permits. The Licensing Center issues 23 different types of licenses and permits governing the manufacture, importing, sales, and use of explosives. Licenses and permits are specific to the class of explosives – high explosives, low explosives, blasting agents, fireworks, and black powder. The ATF's Enforcement Programs and Services Division oversees the regulatory activities carried out by ATF Inspectors located throughout the ATF's 23 Field Divisions. The ATF's Criminal Enforcement Division, comprised of Special Agents, is responsible for investigating illegal commerce and use of explosives.

In addition to the ATF, several other federal agencies have roles in overseeing the manufacture, transport, sale, or use of explosives. For example, the Department of Labor's (DOL) Occupational Safety and Health Administration is responsible for ensuring the safety of workers who manufacture explosive materials. The Mine Safety and Health Administration, also part of the DOL, is responsible for standards that protect workers who use explosives in mines and quarries, and operates under a Memorandum of Understanding with the ATF related to regulatory inspection activities. The Department of the Interior's Office of Surface Mining is responsible for limiting damage from blast effects, such as ground vibration and flying rocks near coal mines. Within the Department of Transportation (DOT), the Federal Motor Carrier Safety Administration is responsible for enforcing laws and regulations related to transporting explosives over highways. The DOT Research and Special Programs Administration is responsible for enforcing packaging and labeling standards. The Coast Guard, which is part of the Department of Homeland Security, is responsible for enforcing laws and regulations related to transporting explosives on the nation's waterways.

¹³ The explosives regulatory functions of the ATF are found at 27 C.F.R. Part 555.

The ATF's pre-SEA inspection activities. Prior to the enactment of the SEA in 2002, the ATF's explosives regulation was governed by Title XI of the Organized Crime Control Act of 1970.¹⁴ In fiscal year (FY) 2001, the ATF conducted 4,179 explosives-related inspections. Of those, 3,324 were compliance inspections, 839 were new application inspections, and 16 were conducted in response to referrals from the ATF's Criminal Enforcement Division. Compliance inspections conducted on licensees and permit holders included, but were not limited to, inspection of storage magazines, records of inventory and sales, and compliance with ATF administrative rules. The ATF conducted application inspections before issuing new or renewal licenses or permits. In FY 2001, there were 9,084 federal explosives licensees and permit holders. Based on the data provided, the ATF conducted compliance inspections on 37 percent of licensees and permit holders during that year.

In response to the terrorist attacks of September 11, 2001, the ATF ordered most of its approximately 500 Inspectors to conduct on-site inspections of all explosives licensees and permit holders in and around major metropolitan areas. In the approximately 120 days following the attacks, this unprecedented special inspection effort resulted in over 5,700 inspections. The ATF characterized these inspections as having a two-fold purpose. The first was to discover and correct any obvious or egregious violations of law or regulations that would facilitate terrorist access to explosives. The second was to encourage licensees and permit holders to increase their vigilance and to report any suspicious activity, purchases, or requests for information, especially from individuals with whom they had not previously done business. In addition to the 5,700 special post-September 11 inspections, the ATF conducted 4,487 explosives-related inspections in FY 2002. Of those, 3,450 were compliance inspections and 1,037 were new application inspections.

The requirements of the Safe Explosives Act. The Homeland Security Act of 2002, of which the SEA is a sub-part, transferred all of the ATF except its alcohol and tobacco tax enforcement and revenue collection functions from the Department of the Treasury to the Department of Justice (the Department). The SEA contains five major provisions regarding the regulation of explosives, which are described below. The first two provisions became effective on January 24, 2003,

¹⁴ P.L. 91-452. Partially as a result of the ATF's growing law enforcement and regulatory responsibilities, the ATF was transferred from the Internal Revenue Service and became an independent entity within the Department of the Treasury in 1972. In January 2003, the ATF was transferred from the Department of the Treasury to the Department of Justice as directed by the Homeland Security Act.

60 days after the law was enacted on November 25, 2002. The last three provisions became effective on May 24, 2003, 180 days after enactment.

Provision one added three new categories of persons prohibited from receiving or possessing explosives — aliens (with limited exceptions), persons who have been dishonorably discharged from the military, and individuals who have renounced their United States citizenship. These categories were added to the pre-existing list of categories of prohibited persons that included convicted felons or individuals under felony indictment, fugitives, users of and persons addicted to controlled substances, and persons who have been adjudicated mental defectives or committed to mental institutions.¹⁵

Provision two requires that manufacturers and importers of explosives provide samples of their products as well as information on the chemical composition and other information to the ATF's National Laboratory upon request.

Provision three requires that all persons who receive explosives must hold a federal explosives license or permit. The SEA also created a "limited permit," which authorizes the holder to purchase and use explosives only within his or her state of residence on no more than six separate occasions during the 1-year term of the permit. Prior to the SEA, persons who transported, shipped, or received explosives in intrastate commerce were not required to obtain a federal license or permit. The "user permit," which existed prior to the SEA, authorizes the holder to receive unlimited amounts of explosives in interstate commerce during the 3-year term of the permit.

Provision four requires that Responsible Persons of companies that manufacture, sell, or use explosives (e.g., corporate officers, site managers) submit detailed personal information, including fingerprints and photographs, to the ATF. In addition, employees whose jobs afford them access to explosives are required to submit Employee Possessor Questionnaires (EPQs). (See Appendix II.) The EPQs are used by the ATF to conduct background checks to verify that the employees are not prohibited persons.

Provision five requires that the ATF perform on-site inspections of all licensees and permit holders at least once every three years, with

¹⁵ The SEA allowed for prohibited persons to be eligible to apply to the ATF for relief from federal explosives disabilities.

certain exceptions, to determine compliance with federal explosives storage regulations. For licensees and permit holders, the ATF must verify, by on-site inspection, that new applicants' and renewal applicants' explosives storage facilities meet federal safety and security regulations.¹⁶

The ATF's official workload estimates for implementing the Safe Explosives Act. According to ATF officials, the ATF made limited attempts to determine the number of individuals who would need to apply to the ATF for an explosives license or permit. In 2002, the ATF Acting Director testified before a Congressional subcommittee that the SEA would cause the population of licensees and permit holders to "double, triple, or even quadruple" from the pre-SEA total of approximately 9,000.¹⁷

In developing its estimates of the potential population of licensees and permit holders, the ATF relied heavily on information provided by one explosives industry group. The group supplied the ATF with information on intrastate explosives sales to unlicensed individuals.¹⁸ The ATF used the information to estimate the number of individuals who might be required to obtain a federal license or permit. ATF Headquarters officials also attempted to determine the potential population by surveying ATF Area Supervisors about state explosives laws in their areas. However, according to ATF Headquarters officials, the information gathered from the Area Supervisors was not helpful and was not used in developing the ATF's projections.

Using this information, the ATF prepared official estimates for the Congressional Budget Office as well as for the Acting ATF Director's

¹⁶ For first-time "limited permit" applicants, the ATF is not required to conduct on-site inspections of storage sites. Instead, the ATF may verify, by inspection or other appropriate means, that acceptable storage facilities exist. For the first and second renewal of "limited permits," the ATF may continue to verify storage by other appropriate means. However, if an on-site inspection has not been conducted during the previous three years, the ATF must, for the third renewal and at least once every three years after that renewal, verify by on-site inspection that the permit holder has acceptable storage facilities.

¹⁷ Testimony of Bradley Buckles before the House of Representatives, Committee on the Judiciary, Subcommittee on Crime, Terrorism, and Homeland Security, hearing on H.R. 4864, the Anti-Terrorism Explosives Act of 2002, June 11, 2002.

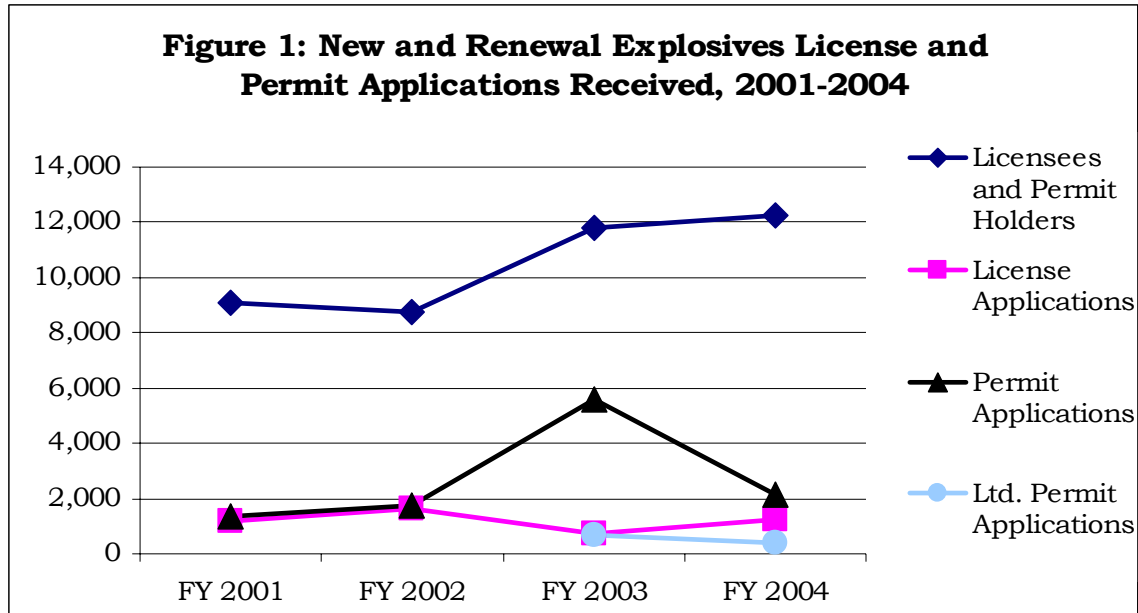
¹⁸ As noted earlier, intrastate purchase and use of explosives were not ATF-regulated activities prior to the passage of the SEA.

testimony before Congress.¹⁹ The ATF also used the estimates to plan for the establishment of a National Explosives Licensing Center staffed by approximately 40 people to process the expected large increase in applications. Based on cost factors associated with the expected increase in staff, the ATF decided to place the center in Martinsburg, West Virginia, at an estimated cost of \$4 million, rather than expand its existing licensing operations in Atlanta, Georgia. In addition, based on the projections, the ATF planned to conduct SEA training for all of its Inspectors and up to 250 of its Special Agents.

However, the population of licensees and permit holders did not increase as much as projected by the ATF. Since the SEA was enacted in November 2002 through September 2004 the population of licensees and permit holders has risen to 12,152, an increase of only about 3,500, not the 18,000 to 36,000 increase projected by the ATF.²⁰ According to the Acting ATF Director at the time and the ATF Assistant Deputy Director for Enforcement Programs and Services, the population did not increase as expected because ATF Headquarters officials did not anticipate that most unlicensed explosives users would hire contract blasters rather than apply for their own federal permit or license. Typically, contract blasters provide services such as destruction of beaver dams and the removal of tree stumps or large rocks. Figure 1 depicts the trend in the population of federal explosives licensees and federal explosives permit holders, along with license and permit application trends.

¹⁹ House Report 107-658.

²⁰ ATF report, "FEL & FEP populations as of 09/29/2004 - end of FY 2004," November 8, 2004.

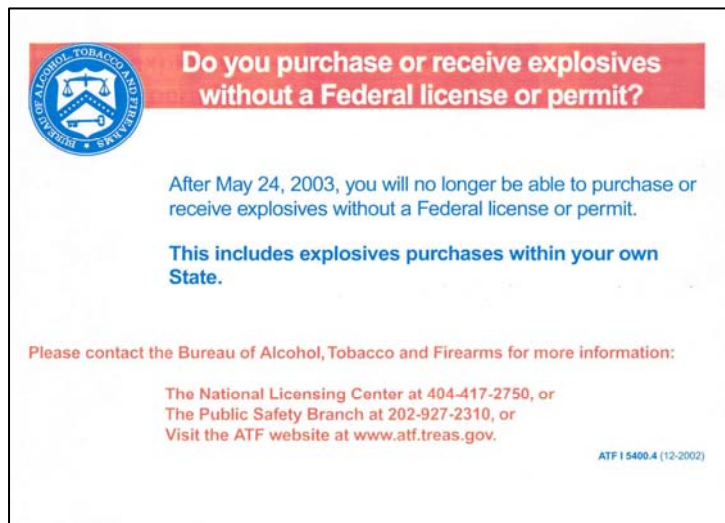


Source: Data provided by the ATF's National Licensing Center.

ATF efforts to inform industry of the SEA and to issue regulations. To notify industry members about the SEA, the ATF sent letters to licensees, posted frequent updates to the ATF website, and communicated with industry groups. For example, four days after the SEA was enacted, the ATF issued open letters to industry members regarding the provisions of the SEA. In the course of the next month, the ATF distributed fact sheets, press releases, and a poster informing unlicensed explosives users about new licensing requirements. (See Exhibit 1.)

The ATF also centralized its implementation of the SEA by appointing one person as the ATF's point of contact and a small team for implementing the SEA. Under the leadership of the point of contact, the ATF worked to keep ATF employees and explosives industry

Exhibit 1: ATF Informational Poster



members informed about the SEA, coordinated meetings and communication between the ATF and outside groups, and coordinated the training of Inspectors to implement SEA provisions.

The ATF issued formal regulations shortly before the Employee Possessor provisions of the SEA took effect on May 24, 2003.²¹ The ATF did not issue a Notice of Proposed Rulemaking, but instead issued an Interim Final Rule two months prior to the effective date of the second set of SEA provisions.²² If it had issued a Notice of Proposed Rulemaking, explosives industry members would have been afforded the opportunity to comment on the ATF's plans prior to their implementation. Instead, the interim rule was issued in March 2003, two months prior to the effective data of the SEA provisions related to conducting background checks on Employee Possessors. Industry groups began submitting comments on the Interim Final Rule in June 2003. During our review the ATF told us that it planned to issue its final regulations for implementing the SEA by mid-2005. In its response to a draft of this report, the ATF extended that target to "in or about" October 2006.

On the whole, every industry group we spoke with said the SEA was an important step toward increasing security. Group members said that they did not object to the new categories of prohibited persons created by the SEA and had few specific problems with the interim rule developed and published by the ATF. The group members stated that the ATF's licensing process did not disrupt their operations and that explosives licensees were generally informed about the SEA's requirements. One exception, which was resolved quickly, involved Pennsylvania anthracite miners (see text box, next page).

²¹ 27 C.F.R. Part 555, Implementation of the Safe Explosives Act, Title XI, Subtitle C of Public Law 107-296; Interim Final Rule. Published in the *Federal Register* on March 20, 2003.

²² For most rules, agencies provide notices of proposed rulemaking so that the public may review the proposed regulations and submit comments. The period during which public comments are accepted generally ranges from 30 to 90 days. An agency is required to consider comments received on proposed regulations. According to the Office of Management and Budget, a Final Rule "generally incorporates a response to the significant issues raised by commenters, and discusses any changes made to the regulation in response." ATF Headquarters officials stated that, due to time constraints and the lengthy time involved in the usual notice and comment rulemaking process, the agency decided to issue interim regulations. A Final Rule has yet to be issued.

Industry members, however, did express concern about how the ATF initially interpreted the SEA's impact on explosives transportation. The ATF attempted to increase its oversight of explosives transportation in the beginning of 2003. Citing the SEA's provision prohibiting aliens from handling explosives, the ATF took the position that Canadian truck drivers and railroad operators should not be allowed to transport explosives into the United States after the DOT issued a regulation exempting these individuals from the SEA's provisions.²³ The DOT, however, cited a statute granting the department and its agencies the authority to oversee all safety-related aspects of explosives transportation.²⁴

To resolve the dispute, the ATF and the DOT asked the Department of Justice's Office of Legal Counsel (OLC) for a legal opinion on whether the SEA extended to explosives transportation. The OLC concluded that the DOT could exempt Canadian transportation workers from being prosecuted under the SEA because the DOT is the federal agency that oversees the transportation of explosives. However, the OLC determined that since the DOT did not have a mechanism to enforce the three prohibiting categories created by the SEA – aliens, persons dishonorably discharged from the Armed Forces, and former citizens of the United States who have renounced their citizenship – it was within the ATF's authority to enforce these prohibitions until the

Pennsylvania Anthracite Miners

Despite the ATF's efforts to inform explosives industry members of SEA regulations, a group of about 20 anthracite coal miners in rural Pennsylvania failed to timely apply for relevant ATF licenses.

After being contacted by the miners' Congressman, the Special Agent in Charge and the Director of Industry Operations of the ATF's Philadelphia Field Division sent Special Agents and Inspectors to Pottsville, Pennsylvania, in June 2003 to process the licensing of the miners. Operating from hotel rooms, the ATF personnel conducted electronic background checks, took fingerprints, and assisted the miners with completing ATF forms.

The Special Agent in Charge stated that the anthracite miners "were not in our purview" prior to the enactment of the SEA, making it difficult for ATF staff to know about their operations.

²³ 68 *Federal Register* 6083, February 6, 2003, Transportation of Explosives From Canada to the United States Via Commercial Motor Vehicle and Railroad Carrier. The rule stated that the DOT will rely on the Canadian government to conduct background checks on all individuals transporting explosives into the United States.

²⁴ 18 U.S.C. 845(a)(1).

DOT promulgated regulations to do so.²⁵ That was accomplished when the Transportation Security Administration (TSA) issued a rule in May 2003 requiring “security threat assessments” for commercial drivers authorized to transport hazardous materials in commerce.

From the issuance of the OLC’s opinion in February 2003 until the TSA issued its rule in May 2003, major transportation firms voluntarily halted all explosives deliveries.²⁶ Explosives industry group members said that because the authors of the ATF rules were not familiar with how the transportation industry operated, the regulations they wrote could have shut down explosives commerce. The confusion arose because, although the ATF previously had authorization to regulate explosives transportation workers under the Organized Crime Control Act of 1970, it did not have a mechanism to enforce this authority until May 2003. At that time, the ATF began requiring all drivers hired to transport explosive materials to complete a form certifying that they were the individuals who would transport the explosive materials from a seller to a buyer.²⁷ The form required “drivers who wish[ed] to transport explosive materials ... complete [the] form before each transaction at a distributor’s (seller’s) premises.”²⁸ The form caused confusion among

²⁵ Office of Legal Counsel opinion, Department of Transportation Authority to Exempt Canadian Truck Drivers from Criminal Liability for Transporting Explosives, February 6, 2003.

²⁶ 68 *Federal Register* 23852, May 5, 2003, Security Threat Assessment for Individuals Applying for a Hazardous Materials Endorsement for a Commercial Drivers License; Final Rule. Beginning January 31, 2005, the TSA began requiring biographical information and fingerprints from individuals wishing to obtain a new Hazardous Materials Endorsement on their state-issued Commercial Driver’s License. Individuals wishing to renew or transfer an existing endorsement will not be required to submit this information until May 31, 2005. TSA background checks include a fingerprint-based FBI criminal history records check, an intelligence-related check, and immigration status verification. However, unlike the ATF’s regulations, under the TSA’s program, applicants with certain criminal convictions will be allowed to possess an endorsement if these convictions occurred more than seven years prior to an application and if the individual has been released from prison for five years or more.

²⁷ Since 1971, the ATF imposed certain identification requirements upon common or contract carrier employees. For example, the ATF required documentation of the name, resident address, and identifying information of common or contract carrier employees. The ATF also required information related to the employee’s driver’s license number and identification document. The ATF provided the employees the option, however, to omit the latter information if the driver was “known” to the distributor.

²⁸ ATF Form 5400.8, revised May 2003.

explosives industry members because they routinely use contract carriers to transport explosives and often have no way of knowing the identity of the specific driver who will deliver the shipment to the purchaser.

In September 2003, in light of the new TSA regulations establishing DOT security threat assessment standards, the ATF stated that the requirement was “unduly burdensome and unnecessary” and discontinued the form.²⁹ Instead, the ATF began requiring distributors of explosive materials to verify the identity of persons accepting possession of explosive materials for common or contract carriers, and required distributors to record the name of the transporter and the name of the driver in the distributor’s records.

The SEA created a new type of explosives permit. For individuals who use explosives on a limited basis, such as farmers who use dynamite to remove tree stumps, the SEA created a new “limited” permit. The Type 60 permit costs \$25 and is valid for one year. It entitles permit holders to the intrastate purchase and use of explosives up to six times a year, actions that are tracked through the use of coupons.³⁰ The renewal fee is \$12. The total 3-year cost, with renewals, is \$49, while the cost of a standard permit, which is good for three years, is \$100. The Type 60 permit is the only permit for which the ATF issues, tracks, and collects coupons.³¹ To prepare for issuing Type 60 permits, the ATF spent \$1.2 million to upgrade the Federal Licensing System (FLS). A portion of the money was also used to connect FLS to criminal information databases for the purpose of conducting background checks on individuals seeking authorization to access explosives.

ATF Headquarters officials estimated that between 10,000 and 15,000 intrastate users of explosives would apply for Type 60 permits once SEA provisions became effective. After the second phase of SEA

²⁹ 68 *Federal Register* 53509, September 11, 2003. In eliminating the form, the ATF stated that it did not “believe that the elimination of this form will result in diversion of explosive materials to criminal or terrorist use.”

³⁰ “Limited” permit holders redeem an ATF-issued coupon to purchase explosives. Explosives dealers are required to submit the coupons they collect to the ATF upon completion of each transaction.

³¹ A portion of the \$1.2 million was also used to upgrade the Federal Licensing System to accept the category of Employee Possessors. ATF staff stated that most of the programming effort, however, related to the creation of the Type 60 permit and its associated coupon tracking system.

provisions went into effect on May 23, 2003, it became apparent that the ATF had overestimated the number of Type 60 permit applications that would be filed. Between May and September 30, 2003, the ATF issued 416 Type 60 permits, all of which were due for renewal prior to September 30, 2004. The ATF received only 372 renewal applications (a 90 percent renewal rate) in FY 2004. The total number of permit holders at the end of FY 2004 (659) represents less than 3 percent of the ATF's highest estimates.

ATF Headquarters staff told the OIG that they believed many infrequent explosives users chose to hire contractors to perform their explosives work rather than apply for a federal permit. Additionally, ATF Headquarters staff noted that others may have applied for a 3-year permit, which allows unlimited usage of explosives, costs about \$50 more than three Type 60 permits (original cost plus renewal fees), and does not require permit holders to renew their permits annually. One industry representative speculated that many infrequent explosives users did not want to deal with increased insurance costs associated with their using explosives and, instead, hired contractors.

The licensing process. To determine the eligibility of individuals applying to be Responsible Persons and Employee Possessors, the ATF developed a partnership with the Federal Bureau of Investigation's (FBI) National Instant Background Check System (NICS) Section.³² This partnership was established with the approval of the Department of Justice's Office of Legal Policy (OLP), which wrote that "... only a check conducted through the [NICS] would reveal prohibiting information regarding mental health prohibitions, dishonorable discharges, persons who have renounced their citizenship, and illegal aliens, information maintained by the FBI solely in the NICS Index."³³

³² Prior to the SEA, the ATF's NLC personnel determined the eligibility of Responsible Person applicants by querying the Treasury Enforcement Communications System (TECS). However, TECS does not contain information related to the prohibiting categories added by the SEA. Specifically, TECS does not contain information related to aliens, persons who have been dishonorably discharged from the military, and individuals who have renounced their United States citizenship.

³³ Letter from Frank A. S. Campbell, OLP Deputy Assistant Attorney General, to Michael D. Kirkpatrick, Assistant Director in Charge, Criminal Justice Information Services Division, FBI; dated January 10, 2003.

To meet the first phase of the SEA, which added three categories to the list of prohibiting factors for individuals wanting to possess explosives, in February 2003, the National Licensing Center requested that the FBI begin conducting NICS background checks on Responsible Person applicants. This decision was based on the fact that Responsible Person fingerprint cards were already being sent to the same FBI facility in which the NICS Section is located – the Criminal Justice Information Services Division.

To meet the second phase of the SEA, which required the ATF to conduct background checks on Employee Possessor applicants, in April 2003, the ATF's Office of Training and Professional Development trained NLC personnel to use NICS E-Check. NICS E-Check is an Internet-based program used to query NICS.³⁴ According to the Chief of the NLC, applications received after April 19, 2003, were processed using NICS E-Check. The Chief stated that NICS E-Checks of Employee Possessors are conducted by a contractor originally hired in mid-2002 to perform clerical work. Through NICS E-Check, the ATF contractor enters personal information from Employee Possessor Questionnaires into NICS.³⁵

The ATF Will Not Conduct Background Checks On All Employee Possessors Until 2006.

Due to the phased implementation required by the SEA, the ATF will not conduct background checks on all Employee Possessors until 2006, when all explosives licensees and permit holders will be required to report these individuals to the ATF. Licensees and permit holders who filed new or renewal applications prior to March 20, 2003, were not subject to SEA provisions related to Employee Possessors and, therefore, are not required to report these employees to the ATF until their licenses and permits – most of which are valid for three years – are due for renewal.

Therefore, the SEA would not have prevented the recent case of a convicted felon accused of stealing ten sticks of dynamite from a Vermont quarry where he worked. Although the employee had worked at the quarry for more than three months prior to the dynamite being discovered in his apartment by local police, the quarry owners were not required to submit the employee's name to the ATF because their license application was submitted one day prior to the March 20, 2003, deadline for applications to be processed under the SEA.

³⁴ The FBI initiated the NICS E-Check system on August 19, 2002. The system was developed so that licensed firearms dealers could electronically query whether potential customers are prohibited from possessing firearms.

³⁵ Personal information entered into NICS includes name, gender, date of birth, and, if provided by the applicant, Social Security number. As of September 2004, at the FBI's request, the ATF was preparing to include additional information, (cont.)

Once an Employee Possessor’s personal information is entered, the system queries three FBI electronic databases – the Interstate Identification Index, the National Crime Information Center, and the NICS Index – to determine whether the individual is prohibited from possessing explosives.³⁶ Individuals who receive a “hit” – a possible match with a name in one of the databases – are referred to an FBI NICS Legal Instrument Examiner for a final determination on whether they are prohibited from possessing explosives. These Examiners review electronic case information and may perform additional legal research.³⁷

During and after the background check process, NICS E-Check provides the status of the check (i.e., pending, proceed, deny, delay). According to FBI data, 88 percent of NICS E-Checks are completed on the day the check

The FBI NICS System Does Not Have Access to Prohibiting Information From All States.

Currently, 23 states do not share all criminal and civil case information with NICS. In these states, referred to as Point of Contact (POC) states, a state law enforcement agency queries NICS and may also query state-run databases before granting or denying a firearms purchase. Besides information related to criminal arrests, these databases may also contain information related to civil cases in which individuals were adjudicated to be mentally defective.

According to NICS Section personnel, if an individual who resides in a POC state applies to the ATF to possess explosives, a NICS Examiner assigned to conduct the individual’s background check does not have the ability to access state-run databases. The fact that potentially prohibiting information may be maintained in state databases that are not accessible to the FBI, and the information is not shared with the FBI through other means, limits the FBI’s ability to identify prohibited persons because, for explosives-related background checks, the FBI only checks NICS – not any state-run databases. Therefore, NICS may not identify prohibited persons residing in POC states who apply to the ATF to possess explosives.

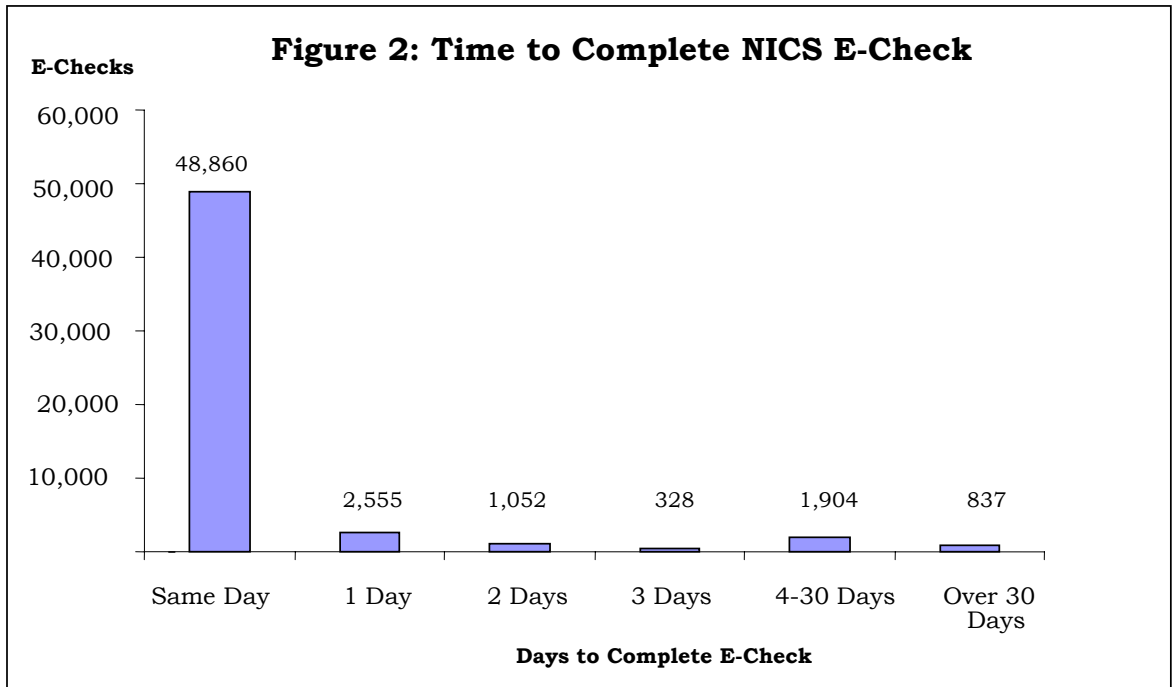
such as driver’s license number, on the Employee Possessor Questionnaires to assist with the background check process.

³⁶ The Interstate Identification Index maintains information on criminal history; the National Crime Information Center maintains information on protective orders, active arrest warrants, and immigration violations; and the NICS Index maintains information provided by federal, state, and local agencies on persons prohibited from possessing firearms and explosives.

³⁷ For example, a NICS Legal Instrument Examiner may research why an individual listed as being on supervised release is under state supervision.

is entered into NICS. Of those, 80 percent of E-Checks are processed in about 90 seconds. Denial cases and cases that NICS Examiners are unable to finalize within 30 days are electronically forwarded to the ATF Brady Operations Branch (Brady Branch) in Martinsburg, West Virginia, for further investigation.³⁸ (See Figure 2 for NICS E-Check completion times.) Therefore, the ATF categorizes NICS checks as “pending” until an NLC contractor or ATF Legal Instrument Examiner logs into NICS E-Check to retrieve the final outcome of the query and enters that information in the FLS. The fact that background checks are pending for some employees does not prevent a business from receiving a license. In fact, explosives license and permit applicants whose employees receive “hits” on NICS are still issued licenses and permits despite the unconfirmed background status of those employees. These licensees and permit holders are issued a Notice of Clearance containing the names of their Employee Possessors and their status — “cleared,” “denied,” or “in progress.” (See Appendix III.)

³⁸ The Brady Branch was created in response to the Brady Handgun Violence Protection Act of 1993. For information on how the ATF acts on potential Brady Act violations, see *Review of the Bureau of Alcohol, Tobacco, Firearms and Explosives’ Enforcement of Brady Act Violations Identified Through the National Instant Criminal Background Check System*, OIG Report No. I-2004-006, July 2004. (See the OIG website, at: <http://www.usdoj.gov/oig/inspection/ATF/0406/final.pdf>.)



Source: FBI National Instant Background Check Section.

Relief of Disabilities. According to data provided by the NICS Section, between February 2003 and August 2004, 1,239 of the 53,544 individuals who applied to be a Responsible Person or Employee Possessor received denials. About 1,100 of these applicants were denied because they had been convicted of a felony. Under the SEA, individuals determined to be prohibited from possessing explosives may apply to the ATF's Explosives Relief of Disabilities Section for "relief" from federal regulations (i.e., an exception that will allow them to possess explosives notwithstanding the prohibiting factors). As of September 1, 2004, 453 individuals had applied for relief. Of those, 299 had been adjudicated by the ATF. Of the 299 applicants, 173 were granted relief.³⁹

³⁹ Of the remaining 126 applicants, 59 were denied relief, 37 did not respond to ATF requests for additional information and their applications were therefore not processed, 21 withdrew their applications, 8 were filed by individuals whom the ATF determined were not prohibited from possessing explosives, and 1 died before the ATF completed the review of his application.

Scope and Methodology of the OIG Review

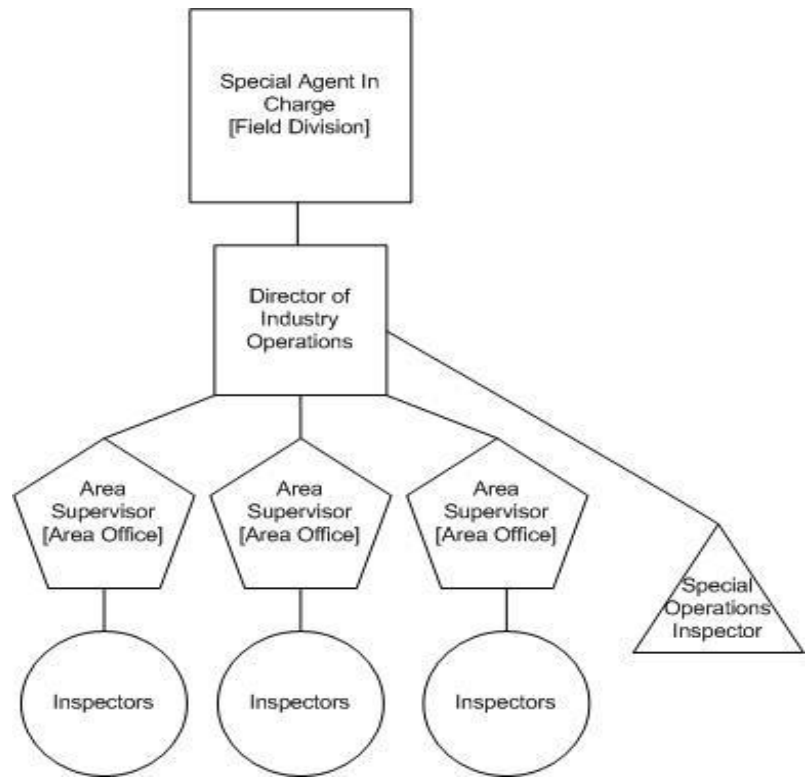
To review the ATF's implementation of the SEA, we focused on the ATF's licensing and permitting operations, including procedures for conducting background checks and granting relief for those individuals determined to be ineligible to possess explosives. We also reviewed the ATF's implementation of changes in inspection activities required by the SEA's provisions. In addition, we reviewed the ATF's plans to establish the National Explosives Licensing Center and the National Laboratory Center's plans to implement the SEA's requirement that importers and manufacturers of explosives provide the Laboratory with samples of their products.

Interviews. We conducted in-person and telephone interviews with personnel from ATF Headquarters and ATF Field Divisions as well as staff at the National Licensing Center, the Arson and Explosives National Repository, and the National Laboratory Center. Specifically, we interviewed individuals from the ATF's Enforcement Programs and Services Directorate, Field Operations Directorate, Science and Technology Directorate, Training and Professional Development Directorate, and the Office of the Chief Counsel. We also spoke with former ATF Headquarters officials, including the former ATF Acting Director.

We interviewed officials from the FBI's Criminal Justice Information Services Division and from the DOL's Mine Safety and Health Administration.

We interviewed three explosives licensees and representatives from three explosives industry groups – the American

Figure 3: ATF Field Division Organization Chart



Pyrotechnics Association, the Institute of Makers of Explosives, and the International Society of Explosives Engineers.

Field site visits. As part of our fieldwork, we conducted in-person interviews with 2 ATF Special Agents in Charge, 4 Directors of Industry Operations, 4 Area Supervisors, and 18 Inspectors at 4 of the ATF's 23 Field Division offices – Atlanta, Chicago, Philadelphia, and Washington. (See Figure 3, previous page, for a representational diagram of an ATF Field Division.)

We chose these sites based on their geographic location and size as well as the number and types of explosives licensees and permit holders they oversee. While at two of these locations, we also observed Federal Explosives Licensee compliance inspections. In San Francisco, where the OIG was invited to testify before a House Committee on Government Reform field hearing concerning “Homeland Security: Surveillance and Monitoring of Explosive Storage Facilities,” we toured explosives storage bunkers (see Exhibit 2) and interviewed ATF personnel as well as state and local law enforcement officials.

Exhibit 2: A member of the OIG Inspection Team examining explosives storage bunkers near San Francisco



In Atlanta, we interviewed four Legal Instrument Examiners, one Program Analyst, contractors, staff, and the Chief of the National Licensing Center. At the ATF's request, we attended an SEA training conference in Providence, Rhode Island, specifically developed for Directors of Industry Operations and Area Supervisors.

Source: Ron Lewis, *San Mateo County Times*, with permission.

Data. The ATF provided us with data related to licensing, relief from disabilities, inspections, personnel, budgets, and explosives-related incidents. In addition, the ATF provided relevant policies, work plans,

and training materials. We also examined data from the ATF's Arson and Explosives National Repository related to bombing incidents and injuries.⁴⁰

The FBI provided us with data from the National Instant Criminal Background Check System.

Background research. Our background research on the SEA and the ATF's enforcement of explosives laws included congressional testimony, legislation, and appropriations. While we focused on the implementation of the SEA, we also identified several issues related to the regulation and safeguarding of explosives in the United States that were not addressed in the SEA but essential to ensuring public safety. Although outside the authority of the ATF, the issues related to explosives not currently subject to regulation and the limits of the ATF's authority to inspect explosives storage facilities.

⁴⁰ We examined ATF data based on the findings of an audit report, *The Bureau of Alcohol, Tobacco, Firearms and Explosives' and Federal Bureau of Investigation's Arson and Explosives Intelligence Databases*, OIG Report No. 05-01, October 2004. The report found that ATF data related to bombing incidents was more current, reliable, and accurate than data from the FBI's Bomb Data Center data. (See the OIG website, at: <http://www.usdoj.gov/oig/audit/ATF/0501/final.pdf>.)

RESULTS OF THE REVIEW

Critical deficiencies in the ATF's implementation of the background check and clearance process prevented the ATF from ensuring that prohibited persons are denied access to explosives. For example, we found no record that the ATF requested FBI background checks on 9 percent of Employee Possessor applicants. For 31 percent of all Employee Possessor applicants, the ATF had not made a final clearance determination. In over half of the 1,157 cases in which the FBI reported finding potentially prohibiting information, the ATF did not act and, as a result, the individuals continue to be authorized to access explosives. Further, the ATF has not conducted the additional investigative work needed to complete background checks on 297 potential prohibited persons for whom the FBI could not confirm potentially prohibiting information during its background checks. Finally, we found that some of the largest employers of explosives workers in the United States have reported no new Employee Possessors to the ATF since May 2003, although the SEA requires that new Employee Possessors be reported within 30 days. The above shortcomings in the license processing system occurred, in part, because the ATF's FLS contains significant structural deficiencies that limit its utility for monitoring the licensing process and for providing ATF management with information on critical aspects of licensing operations.

The ATF frequently failed to complete the background check and clearance process to ensure that only cleared employees of license and permit holders have access to explosives.

A primary purpose of the SEA is to keep potentially dangerous individuals from obtaining explosives. The Department of the Treasury, Assistant Secretary of Enforcement, testified during a June 2002 congressional hearing on the SEA that "given the increasingly unstable state of affairs in our world today, unchecked access to explosives is unacceptable."⁴¹

⁴¹ Testimony of Kenneth Lawson before the House of Representatives, Committee on the Judiciary, Subcommittee on Crime, Terrorism, and Homeland (cont.)

The SEA added three categories to the existing four categories of individuals prohibited from having access to explosives, and further required the ATF to conduct complete background checks to ensure that prohibited persons are not granted access to explosives. To meet this requirement, the ATF entered into an agreement with the FBI to conduct NICS background checks on all Employee Possessors.⁴² After receiving the results of the FBI NICS E-Check, the ATF may collect additional information before determining whether an individual is authorized to have access to explosives.

However, we found that in some cases, the ATF failed to request FBI NICS E-Checks on all Employee Possessor applicants. The ATF also frequently failed to make final determinations on employee clearance status based on the FBI NICS E-Checks and other information sources. Because of these failures, in some cases, prohibited persons were not denied access to explosives.

The ATF failed to request FBI NICS E-Checks on all Employee Possessor applicants. To determine whether the ATF had conducted the required background checks on all Employee Possessors, we asked the ATF to provide us with the number of Employee Possessors in the FLS database. We requested this information because, as the licensing process was initially explained to us by the NLC, each Employee Possessor record in the FLS would have a corresponding and distinct NICS E-Check. We compared the number of Employee Possessor records in the FLS with the number of NICS background checks on Employee Possessors recorded by the NICS Section and found that the ATF had 10,069 more Employee Possessor records in the FLS than the number of background checks performed by the FBI NICS Section.⁴³ (See Table 1.)

Security, hearing on H.R. 4864, the Anti-Terrorism Explosives Act of 2002, June 11, 2002.

⁴² The ATF does not conduct NICS E-Checks on Responsible Persons, but instead forwards fingerprint cards and other identifying information directly to the FBI, and the FBI queries NICS.

⁴³ The FBI's NICS Section performed a total of 53,544 background checks on Employee Possessors and Responsible Persons.

Table 1: Reported Employee Possessor NICS E-Checks (February 2003 to August 2004)					
Agency	Approved	Denied	Pending/ Open	Cancelled	Total
ATF	30,906	502	25,181	N/A	56,589
NICS Section	44,540	1,157	751	72	46,520
Discrepancy	13,634	655	(24,430)	N/A	(10,069)

Source: FBI National Instant Background Check System Section and the ATF National Licensing Center, as of August 2004.

In a meeting to discuss the discrepancy, ATF Headquarters officials explained that the number of Employee Possessors originally reported to us was overstated because an Employee Possessor could be associated with a single application that requested multiple types of licenses and therefore would appear in the FLS multiple times (once for each license type). In these cases, the outcome of a single NICS E-Check would be used to enter the Employee Possessor's status in the FLS for each license.⁴⁴ Further, NLC staff explained, because there is no unique field in the FLS to track individual NICS E-Checks, the FLS is incapable of accurately reporting the number of persons checked through NICS E-Check for comparison with NICS records.

In contrast, we found FBI NICS Section data related to the ATF's NICS E-Check activities to be reliable. The FBI's NICS E-Check system is capable of accurately tracking and reporting on usage as each case is assigned a unique control number and is associated with a specific user identification number.⁴⁵ In a conference call between the OIG Inspection Team, NLC staff, and the FBI's NICS Section, a manager at the NICS Section told the OIG that the NICS data are complete and accurate because, "It's the system that did the checks and nothing has been purged." The ATF did not dispute that statement.

⁴⁴ Separate explosives licenses are required for different business activities, such as manufacturing, importing, and dealing.

⁴⁵ To distinguish the NLC and NELC from other NICS E-Check users (more than 3,200 licensed firearms dealers), the NICS Operations Branch assigned the NLC its own Federal Firearms License number.

Because we could not compare FLS and NICS data to determine that the ATF had requested NICS E-Checks on all Employee Possessor applicants, we requested from the ATF the first 1,000 Employee Possessor records in the FLS database (sorted alphabetically), as of January 12, 2005.⁴⁶ After accounting for duplicate records, we determined that the 1,000 records represented 683 individuals. We then asked the FBI to query NICS records to confirm that the ATF had requested NICS E-Checks on those 683 individuals. According to the FBI NICS Section, it compared the ATF records that we provided to the NICS automated system by exact name as requested. While manually evaluating the automated system response, the FBI NICS identified potential omissions. In approximately 23 percent of the cases, a NICS check did not exist when searched by exact name only. A complete search by Social Security number was not feasible because a Social Security number was not provided for some individuals. Therefore, the FBI responded to us by providing all records of NICS E-Checks on Employee Possessors submitted by the ATF NLC for individuals within the same alphabetic range as the ATF records (i.e., names beginning with Aar through Amb).

We manually compared the FBI data with the ATF data and found 63 Employee Possessors in the FLS that had no record of having had a NICS E-Check. Because individuals can be Responsible Persons in addition to being Employee Possessors, and therefore may have had their background checks conducted in that category, we examined FLS data and found that 4 of these 63 individuals were also Responsible Persons.⁴⁷ Therefore, we concluded that at least 59 of the 683 Employee Possessors in the ATF FLS database (9 percent) had never received a NICS E-Check. Of those 59, FLS records indicated that 34 individuals were in a pending status and 25 had been cleared to access explosives.

Unidentifiable NICS E-Checks. In reviewing and comparing the ATF and FBI records, in addition to identifying individuals for whom no NICS E-Check had been conducted, we identified instances in which the NLC's NICS user identification number had been used to conduct background checks on persons who did not appear as Employee Possessor applicants. In our review of the data, we determined that, due to duplication as well as names being entered into only one of the

⁴⁶ Our sample of 1,000 records was statistically valid at the 95 percent confidence level and had a 3.5 percent margin of error.

⁴⁷ Because the background check for a Responsible Person is more extensive, a NICS E-Check is unnecessary.

databases, the FBI and ATF data comprised 1,193 different records. Of those:

- 967 were recorded in both the FBI's NICS and ATF's FLS databases, including those cases where only one FBI NICS E-Check was conducted for multiple FLS entries and vice versa;
- 79 were recorded in the ATF's FLS database but had no corresponding record in the FBI's NICS database. These records represented 63 individuals; and
- 147 were recorded in the FBI's NICS database but had no corresponding record in the ATF's FLS Employee Possessor database.

On February 16, 2005, the OIG supplied the ATF with a list of NTN's (the unique identifier used by NICS to track background checks) for 145 of the 147 records which could not be found in the FLS list of 1,000 Employee Possessors (2 were found to be Responsible Persons, not Employee Possessors). We asked the ATF to reconcile the discrepancy between NICS and the FLS. On February 25, 2005, the ATF provided a list of 121 records it had identified as Responsible Persons who were listed in the FLS and matched the FBI-NICS NTN. In addition, the ATF determined that five of the records were Employee Possessors listed in the FLS under different names. The ATF stated that the remaining 19 records could not be found in the FLS. However, after reviewing the ATF-provided list, we found that two records the ATF reported as "found" did not match the person who was the subject of the FBI NICS E-Check. We are concerned about the existence of NICS E-Check records for individuals who cannot be confirmed as explosives license applicants or their employees because it could indicate misuse of the NICS E-Check system. The NLC's use of the NICS E-Check system is intended for legitimate background checks of explosives license applicants and their employees. If these checks were not initiated on explosives license applicants or their employees, it would be an abuse of the NICS E-Check system.

The ATF frequently failed to make final determinations on employee clearance status based on the FBI NICS E-Checks and other information sources. In reviewing ATF FLS data, we noted that 25,181 of 56,589 Employee Possessor records (45 percent) were in a "pending" status. According to the procedures explained to us by the ATF NLC, a pending status indicated that the ATF had not made a final determination on clearance or denial.

We determined that the ATF was not completing adjudications of Employee Possessor clearances. According to FBI statistics, 88 percent of all NICS E-Checks are completed within 24 hours, and we confirmed with the FBI NICS Section that the ATF had retrieved the results of almost all of the NICS E-Checks it submitted. According to the FBI NICS Section, as of February 14, 2005, fewer than 100 E-Checks of Employee Possessors had not been retrieved and remained pending in NICS. Cases are automatically cleared from the NICS E-Check pending database when an NLC Examiner queries NICS E-Check for the outcome of a background check. The fact that few cases were held as pending in NICS indicates that NICS checks had been completed and NLC staff had retrieved the outcome of these checks. Therefore, we questioned why a significant number of Employee Possessor records in the FLS were still pending.

When we discussed our findings with the Chief of the NLC and an NLC Program Analyst, they stated that they were unaware of the number of background checks appearing as “pending” in the FLS until we requested the information in September 2004. Both stated that the NLC already had issued the licenses and permits associated with these “pending” Employee Possessors. The Chief of the NLC acknowledged this is as “a major weakness” in the explosives licensing process and began an initiative to address the discrepancy in November 2004.

In discussing possible reasons for the high number of pending records, ATF Headquarters officials hypothesized that Employee Possessors may appear in multiple records but Legal Instrument Examiners may have entered NICS E-Check results in only one of the records and left the other records associated with the individual as pending.⁴⁸ According to the ATF, an individual could appear in multiple FLS records if a business had applied for multiple licenses, either in one application package or in separate applications.⁴⁹

To test the ATF’s hypothesis, we reviewed Employee Possessor data for every license and permit application submitted to the ATF since the

⁴⁸ In the same meeting, the ATF officials noted that, due to the heavy workload at the NLC, staff there may have entered NICS E-Check results for only one license per Employee Possessor – not for every corresponding FLS record.

⁴⁹ NLC staff stated that it is possible for a company to submit separate explosives license applications for each of its locations while only submitting one batch of Employee Possessor Questionnaires. NLC staff stated that these applications could arrive at the NLC in one package or within several days of each other.

background check provisions of the SEA became effective in May 2003.⁵⁰ We found that only 460 of the 8,940 explosives license and permit applications submitted since May 2003 requested multiple license types (i.e., user, manufacturer, importer, retailer) on the same application.⁵¹ These 460 applications requested a total of 1,030 explosives licenses and included a maximum total of 1,460 possible duplicate Employee Possessor records. Therefore, this explanation could account for no more than 15 percent of the total discrepancy.⁵²

In addition to finding multiple license types associated with the same application, we also found instances of multiple applications from the same entity for different licenses (e.g., for different license types or different locations) that might possibly explain the difference in Employee Possessor records in the FLS and the number of NICS E-Checks performed on these Employee Possessors.

Therefore, in order to finally ascertain whether individual Employee Possessors had a determination entered in at least one of their records, we reviewed the first 1,000 Employee Possessor records listed alphabetically in the FLS as of January 12, 2005. We found that 43 of the 1,000 records were duplicates because an Employee Possessor was associated with multiple licenses issued based on a single application. In addition, we found that other individuals appeared more than once because they were associated with *separate* applications from one or more entities. As explained previously, we determined that the 1,000 Employee Possessor records represented 683 distinct Employee Possessors.⁵³ Of those 683 individuals:

⁵⁰ The OIG Inspection Team reviewed a list of all license and permit application identification numbers (whether or not a permit or license was issued), the license and permit numbers associated with each application, and the total number of Employee Possessors associated with these applications.

⁵¹ Applicants for explosives permits cannot apply for more than one permit type.

⁵² The OIG Inspection Team calculated for all possible cases where a duplicate record may have occurred in the FLS. Since the data did not include information on specific Employee Possessors, but only total numbers, the Inspection Team considered all Employee Possessors associated with a second, third, or fourth license as potential duplicate records. Therefore, the actual number of duplicate Employee Possessor records associated with the 460 applications could be substantially less.

⁵³ The OIG Inspection Team controlled for duplicates by using the last name, Social Security number, and date of birth for each Employee Possessor record in the FLS.

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- 405 individuals represented by 526 records had a NICS E-Check status of “cleared” in each of their FLS records,
 - 11 individuals represented by 14 records had a NICS E-Check status of “denied” in each of their FLS records,
 - 211 individuals represented by 271 records had a NICS E-Check status of “pending” in each of their FLS records,
 - 53 individuals represented by 182 records had a NICS E-Check status of “clear” in at least one FLS record and “pending” in at least one other, and
 - 3 individuals represented by 7 records had a NICS E-Check status of “denied” in at least 1 FLS record and “pending” in at least 1 other.

Based on the above analysis, the OIG determined that the data does not support the ATF’s claim that a clearance or denial had been entered into at least one FLS record for each Employee Possessor. As the ATF-provided data shows, 31 percent (211 of 683) of the Employee Possessors in our sample were listed in the FLS as pending in *all* of their records. The average time that these individuals had remained in a pending status was 299 days. Extrapolating from the rates found in our statistically valid sample, the universe of 56,589 Employee Possessor records in the ATF’s FLS database would represent approximately 38,650 individuals, of whom 11,943 would have neither a NICS E-Check result nor a final ATF determination on whether the individual should be allowed access to explosives.

The ATF did not consistently act upon NICS determinations and as a result allowed more than half of the individuals identified by the FBI as potentially prohibited persons to have access to explosives. According to FBI data, as of August 2004, 1,157 Employee Possessors had been identified through the NICS E-Check as potential prohibited persons.⁵⁴ However, according to ATF data, as of August 2004, only 502 Employee

⁵⁴ A “denied” response from NICS is only a recommendation. The ATF makes the final determination whether an Employee Possessor applicant is to be denied authorization to handle explosives. NICS E-Checks are not considered final because the “hits” may be a result of prohibiting factors for gun purchases that are not prohibiting factors under the SEA (*i.e.*, misdemeanor domestic violence conviction, order of protection).

Possessor applicants had been denied the authority to legally possess explosives. Over half of the individuals identified by the FBI as being potential prohibited persons (at least 655 of 1,157) were still categorized as “pending” in the FLS and were still authorized to have access to explosives because the ATF had not made final determinations on their clearance status.⁵⁵

After we alerted the ATF to the difference in the numbers of FBI- and ATF-identified prohibited persons, the NLC examined a non-statistical sample of 52 records of individuals identified by the FBI as potential prohibited persons to determine their status in the FLS. On November 6, 2004, the ATF reported to us that of the 52 individuals, 23 were listed in the FLS as being “denied” access to explosives, 17 were listed as “pending,” and 2 were listed as “cleared.” The remaining ten were initially not found in the FLS, but subsequently, the ATF reported that it had found nine of these individuals. In January 2005, the ATF corrected its initial response and reported that of the 52 individuals, 26 were listed in the FLS as being “denied” access to explosives, 20 were listed as “pending,” 4 were listed as “cleared,” 1 was listed as “denied” in 1 FLS record and “pending” in another record, and 1 did not appear in the FLS at all.⁵⁶

To determine the potential significance of the criminal records of those individuals listed in the FLS as “cleared” or “pending” but who were denied by the FBI NICS check, in November 2004 we conducted NCIC background checks on the 17 individuals that the ATF initially reported as pending in the FLS. Among those who received a NICS response of “denied” but were still authorized to possess explosives by the ATF as of November 6, 2004, the OIG found four convicted felons and three aliens

⁵⁵ According to Notices of Clearance issued by the ATF to licensees and permit holders, Employee Possessors with a background check status of “pending” are authorized to access and handle explosives under the provisions of the SEA. In such cases, licensees are issued a Notice of Clearance listing the names of those Employee Possessors as “pending.” See Appendix III for an example of a Notice of Clearance.

⁵⁶ After undertaking a subsequent extensive review of its FLS data, the ATF explained that the errors in its initial response were due to programmer error. We note that one of the Employee Possessors recorded in the FLS as “cleared” had been granted Relief of Disabilities by the ATF and, therefore, is authorized to possess explosives. This individual should not have been denied by the NICS Section, according to ATF procedures for notifying the FBI when individuals are granted relief. An ATF Headquarters official stated that the ROD section provides a monthly spreadsheet to the NLC so that the NLC can update its records. However, in March 2005, he also stated that this had not been occurring in recent months and that his office is working with NICS to resolve the issue.

(one under an Immigration and Customs Enforcement removal order).⁵⁷
For example:

- One individual had been arrested over 20 times since 1992 and was incarcerated and serving a 33-month sentence with the Arizona Department of Corrections on a felony theft charge, his third felony conviction.
- Another individual was a convicted felon serving a 3-year probation sentence for illegally leaving a “halfway house” prior to being formally discharged. The individual had been arrested at least 20 times since 1986, and had been convicted of 3 felonies, including larceny and forgery. According to FBI data, the ATF initiated the NICS check on this individual on October 18, 2004, which we found was only six days after his latest release from jail. As of December 13, 2004, the individual was working at a building construction site, according to his probation officer.
- Another individual had been arrested ten times since 1985. Four of the arrests resulted in felony convictions – two incidents of burglary, and one each of larceny and property damage. In addition to the felony convictions, on July 6, 1999, the individual was arrested on misdemeanor charges related to domestic violence and sentenced to jail.
- Another individual had been arrested six times since 1979, including two arrests for violating an order of protection. He had been convicted four times on charges ranging from criminal mischief to assault and was sentenced to a total of five years’ incarceration.

Because the ATF had not denied these individuals but continued to show them as pending in the FLS, they continued to have ATF authorization to access explosives for as long as 14 months after being identified as a prohibited person by the FBI.

The ATF does not consistently complete background checks on individuals for whom the FBI could not complete a NICS check. Since May 2003, more than 800 cases of individuals whose names appeared in NICS, but whom the FBI could not confirm as a prohibited person within

⁵⁷ Based on follow-up information provided to the OIG Inspection Team, these individuals were still recorded as “pending” in the FLS, as of January 13, 2005.

30 days (e.g., due to unavailability of court records), have been referred by the FBI to the ATF to complete the background investigation. We found that the ATF has failed to follow up and complete the investigations of these individuals' backgrounds to determine if they should be prohibited from accessing explosives. In response to an OIG inquiry, in September 2004 the ATF told us that the FBI had referred 856 Employee Possessor applicants to have their background checks completed by the ATF.

Subsequent to our inquiry, in November 2004 the ATF reported that it had initiated an effort to determine how many individuals associated with active explosives licenses remained in "pending" status. As of January 2005, the ATF reported that 559 of the Employee Possessors ultimately had been cleared or denied by either NLC Legal Instrument Examiners or the FBI, or they were administratively cancelled (e.g., because the license applications were withdrawn). However, 297 of the individuals who could not be confirmed as prohibited persons by the FBI remained in pending status and continued to have the authority to possess explosives. We determined that the background checks for these individuals had been pending for an average of 363 days.⁵⁸

We examined the actions taken by the ATF to resolve the 297 cases and determined that the ATF had not established procedures to ensure that such cases are resolved. In similar cases related to potential firearms sales, specialists at the ATF's Brady Branch determine the additional investigation required and assign the cases to the appropriate ATF Field Division. The Field Division then conducts an investigation to determine whether the individuals should be prohibited from possessing firearms.⁵⁹ Consistent with that practice, the FBI began forwarding cases involving explosives Employee Possessors to the ATF Brady Branch for processing, and a Brady Branch supervisor told us that the branch initially planned to treat explosives referrals in the same way as firearms cases. However, the supervisor said, the ATF Deputy Assistant Director, Enforcement Programs and Services, verbally informed Brady Branch personnel to set aside explosives-related NICS referrals because the Chief of NELC would process the explosives-related referrals. One Brady

⁵⁸ In deriving this average, we deleted 23 records for which the ATF could not provide the date that the record was initially entered into the FLS or for which the date preceded the agreement between the ATF and the FBI regarding the use of NICS E-Check at the NLC.

⁵⁹ As previously discussed, licensed firearms dealers query NICS to determine if potential customers are prohibited from possessing firearms.

Branch Specialist said, “We were told to do nothing with them when they came in. They were put on hold. They weren’t in our mission, which is to do firearms.” The OIG confirmed with the Chief of the NELC that one of his first tasks after being assigned in October 2003 was to process the NICS referrals by following up on the NICS response and determining if the individuals should, in fact, be denied access to explosives.

Although the Brady Branch did not investigate the cases, Legal Instrument Examiners at the NLC continued to monitor some Employee Possessor applicants whose background checks could not be completed by the FBI. In some cases, the NLC Legal Instrument Examiner sent queries (“arrest letters”) to Employee Possessor applicants asking for information to assist in determining whether the individual was indeed prohibited from possessing explosives. The letter also requested that the applicant submit a completed fingerprint card to the ATF within 30 days.⁶⁰ Otherwise, according to the letter, the applicant’s records would be forwarded to the nearest ATF Field Division for investigation.⁶¹ However, as of January 2005, NELC officials we spoke with told us that none of the 297 pending cases had been referred to an ATF Field Division for investigation.

Many explosives licensees have not reported hiring any new Employee Possessors. The SEA requires that explosives licensees and permit holders report all new Employee Possessors to the ATF within 30 days of their being hired. Under the provisions of the SEA, companies should submit Employee Possessor Questionnaires for their new employees, and the ATF should conduct the required background check and issue the company an amended Notice of Clearance reflecting the results of the check. However, our review of data provided by the ATF found that few explosives licensees and permit holders have reported new hires and received amended Notices of Clearance to provide the results of the Employee Possessors’ background checks.

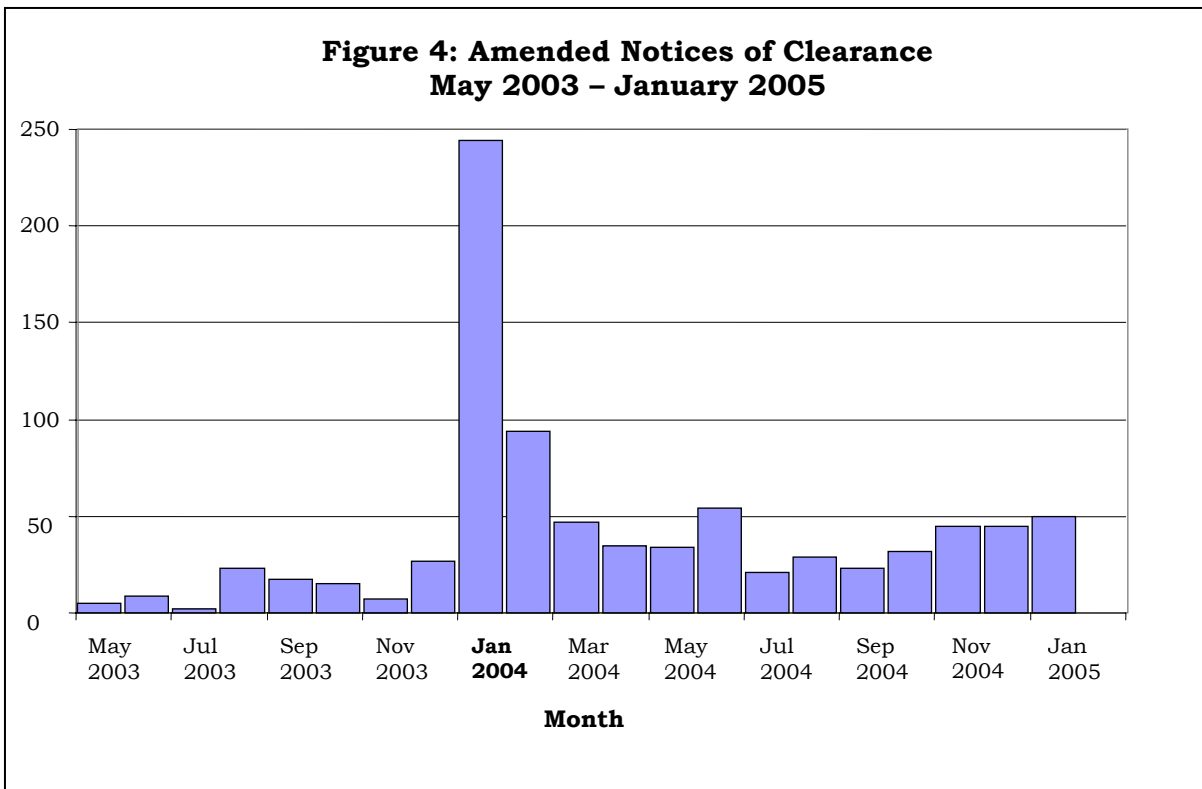
⁶⁰ In January 2005, ATF officials informed us that this letter has been renamed a “criminal records letter” and now requests that applicants submit a fingerprint card to the ATF within 45 days.

⁶¹ The Chief of the NLC stated that she was not aware of this letter until September 2004. According to the Chief, ATF Headquarters officials updated an existing “arrest letter” used to seek information from individuals seeking Federal Firearms Licenses without her knowledge. Individuals seeking a Federal Firearms License are already required to submit a completed fingerprint card with their application.

To identify licensees who reported newly hired Employee Possessors, we asked the ATF for information on all companies covered by the background check provisions of the SEA. We also asked for information on all amended Notices of Clearance issued to those companies. On February 11, 2005, the ATF provided data showing that 9,510 new licenses were issued from May 23, 2003, through January 31, 2005, and that 920 amended Notices of Clearance were issued during that same 20-month period.

However, we found that not all of the 920 amended Notices of Clearance were issued as a result of companies reporting new employees. Upon analyzing the ATF data, we found that 338 of the 920 amended Notices of Clearance were issued in January or February 2004. (See Figure 4, next page.) When we questioned the ATF about this, an NLC Program Analyst told us that many of the “amended” Notices of Clearance issued during that time were not actually issued in response to reports of new employees, but were issued because the original Notices of Clearance had been returned to the ATF by the U.S. Postal Service as “undeliverable.” The Notices had been undeliverable because they were mailed to field locations that did not have mailboxes or clearly marked addresses (e.g., coal mines and quarries) rather than to the corporate offices of the companies.⁶² The Program Analyst reported that he personally initiated 327 of the amended Notices of Clearance and that “a majority” of the notices he issued during that time were only “re-mailings.” However, the ATF could not identify exactly how many of the 920 amended Notices of Clearance were issued in response to reports of new employees and how many were issued to correct address problems.

⁶² The NLC corrected this problem in January 2004 by directing all Notices of Clearance to corporate offices, according to the Chief of the NLC.



Source: ATF National Licensing Center.

Our further examination of the records of amended Notices of Clearance found that 43 of the 920 Notices were duplicates. We asked the Program Analyst about these cases, and he explained that the duplicate entries did not mean that more than one amended Notice of Clearance had been sent. Instead, he explained, the certificate printing was done using batch processing. Therefore, several “print orders” could be entered into the FLS during the day, but only the last amended Notice of Clearance entered into the system would be printed at the end of the business day. Overall, because some of the 920 amended Notices of Clearance were due solely to address errors, and some of the Notices were duplicates, we estimate that the number of actual amended Notices of Clearance issued in response to reports of new employees is, at most, about 700. That indicates that less than 8 percent of the 9,510 explosives licensees covered by the SEA had reported any new hires to the ATF between May 2003 and January 2005.

Although a low percentage of companies had reported new employees and received amended Notices of Clearance, many companies may be small or family-owned businesses that may have minimal turnover. Because larger companies are more likely to experience turnover, we examined the data related to the 50 licenses (held by a total of 26 companies) with the highest number of related Employee

Possessors.⁶³ We found that a total of 25,385 Employee Possessors were associated with the 50 licenses. Since May 2003, new employees had been reported by the companies for 26 of the licenses.⁶⁴ No new employees had been reported for the remaining 24 licenses, which represented a total of 13,380 Employee Possessors, according to the original applications.

If new Employee Possessors are not reported when they are hired, the ATF may not know to conduct the required background check until their employers' licenses must be renewed or until compliance inspections are conducted. We reviewed the ATF's procedure for conducting compliance inspections and confirmed that it includes steps to identify new, unreported employees. During the compliance inspections, Inspectors are instructed to compare the ATF NLC's list of Employee Possessors against a licensee-generated list of employees to identify any employee changes.⁶⁵ However, the ATF is only required to conduct compliance inspections on explosives licensees once every three years. New employees would also be reported when the licensees submit applications to renew their licenses, which also occur on a triennial basis. If an employer fails to timely report new employees so that the ATF can check their backgrounds, prohibited persons could have access to explosives until the next time that employer's permit or license is renewed or a compliance inspection is conducted.

⁶³ The 26 companies held multiple licenses because each business location requires a separate license.

⁶⁴ Some of these companies sent in more than one report of new employees. In total, the 7 companies had received a total of 21 amended Notices of Clearance. We note that the licensee with the most Employee Possessors (1,124) had not reported a new Employee Possessor to the ATF since March 2004. A review of the company's website in February 2005 indicated that it was still operating and was actively hiring supervisors for its coal mining operations.

⁶⁵ Inspectors are also instructed to interview at least one employee observed to be handling or possessing explosives to verify that the individual is an Employee Possessor cleared by the ATF and to ask if there have been "any suspicious job applicants or employees leaving employment under possible criminal circumstances." The Inspectors are instructed to report the names of any such individuals to ATF Criminal Enforcement.

ATF information systems are ineffective for managing the explosives licensing functions mandated by the SEA.

The ATF's FLS contains significant structural deficiencies that limit its utility for monitoring the licensing process and providing ATF management with information on critical aspects of licensing operations. In addition to structural deficiencies, during this review we found numerous instances of inaccurate, incomplete, and missing data in the FLS database. Combined, these deficiencies prevent timely and effective management of some of the most basic activities related to the ATF's explosives oversight responsibilities. The following summarizes some of the significant shortcomings of the FLS for managing the explosives licensing program.

The FLS cannot be used to ensure that NICS E-Checks are conducted on all Employee Possessor applicants during the licensing process. One of the most critical functions of the explosives licensing program implemented under the SEA is the conduct of a complete background check on individuals applying to be Employee Possessors before granting them clearance to have access to explosives. In order to determine the eligibility of individuals applying to be Responsible Persons and Employee Possessors, the ATF developed a partnership with the FBI NICS Section. Under the agreement, the FBI conducts a complete background check on Responsible Persons, including a check based on fingerprints, and NICS E-Checks on Employee Possessors who apply to the ATF for authorization to handle explosives.

However, the FLS does not contain fields to confirm that background checks have been initiated and completed. The FLS does track the status of an Employee Possessor's clearance and indicates whether it is approved, denied, or still pending. As noted earlier in this report, our review found that 61 of the 683 Employee Possessors whose FLS records we reviewed and compared with corresponding FBI data had no record of having had a NICS E-Check conducted. Notwithstanding the fact that these individuals had a NICS status listed in their FLS record, because the FLS does not contain a field to positively track background checks, the system was incapable of notifying ATF management that nearly 9 percent of Employee Possessor applicants appear not to have had the required background checks.

The FLS cannot be used to properly manage and report on the clearance status of employees of explosives licensees. In addition to not tracking the initiation and completion of background checks, the FLS was not capable of accurately tracking and reporting on the status of

Employee Possessor applications. The data provided by the ATF in response to our initial requests for information on Employee Possessor records in the FLS indicated that approximately 45 percent of all records had a NICS E-Check status of “pending.” Because some Employee Possessors have more than one record in the FLS, we examined a sample of 1,000 records to determine whether a final determination was listed in at least one record for each Employee Possessor. We found that, after accounting for multiple entries, about 31 percent of all Employee Possessors were listed as pending in all of their records. These individuals had been held in pending status for an average of 299 days.

The high volume of records in a pending status, and the long duration that they remained in that status, occurred because the FLS is not designed to notify ATF management of status problems. For example, the FLS does not provide ATF management with aging reports that would identify the number of Employee Possessor records remaining in pending status for specified timeframes (e.g., 0 to 30 days; 30 to 60 days). Given the quick response time and very few “hold” responses for background checks provided by the NICS Section (see page 16), the number of records remaining in a pending status for long periods should be minimal.

The FLS does not ensure that all records related to the clearance status of Employee Possessors are current and consistent. We found that the FLS is not designed to prevent individual Employee Possessors with multiple records from having a different status listed in each record. Of the 683 individual Employee Possessors in the 1,000 FLS records reviewed by the OIG, just over 8 percent showed multiple statuses in the FLS. We found instances of an Employee Possessor listed as “cleared” for one license and “pending” for another. In other cases, an Employee Possessor was listed as “denied” for one license and “pending” for another. This is a potentially significant deficiency. If the FLS does not warn ATF management when an individual has different statuses listed in different records, individuals prohibited from accessing explosives in response to one license application could mistakenly be authorized access to explosives because they are still “pending” in their records related to other license applications.

The FLS cannot be used to accurately track trends in the reporting of new employees. Under the SEA, employers are required to report new employees within 30 days so that the ATF can conduct the required background checks. Once those checks are completed, the employers are provided with amended Notices of Clearance reflecting the results of those checks. However, we found that few employers had been issued

amended Notices of Clearance, indicating that they had not reported any new employees. These included some of the largest employers of explosives workers in the United States for whom having no new hires for many months or years would be highly unlikely.

The FLS is not identifying employers who have gone an extended period of time without reporting any new Employee Possessors. Moreover, the system does not track the reasons that amended Notices of Clearance were issued. Therefore, the FLS cannot accurately distinguish companies that received amended Notices of Clearance because they reported new employees and those that received amended Notices of Clearance for administrative reasons (e.g., reincorporation, address errors). Because of these deficiencies, the ATF cannot effectively use the FLS to identify companies that may not be complying with the reporting requirements of the SEA.

The FLS does not have sufficient error-checking mechanisms and data entry guidelines to prevent the entry of faulty, inaccurate, or inconsistent data. During our examination of more than 2,000 FLS records as a part of this review, we found a high number of data errors and inconsistencies in the FLS database. Examples of data errors and inconsistencies we found include:

- missing data (e.g., middle names, name suffixes “Jr.” or “Sr.”);
- inconsistent data entry (e.g., inconsistent use of “The” as part of company name and inconsistent abbreviations – “The Z Corp.” versus “Z Corporation, The”);
- misspellings of common names and words (e.g., “Julie” versus “Jullie,” “Operations” versus “Oprations”);
- different spellings of words or names entered from the same original documents (e.g., same company name entered differently on three successive records); and
- illogical data (e.g., dates of birth in the future).

Many of the errors occurred because the FLS is not designed to reject data that is obviously incorrect, either because it is misspelled or illogical. The number of data errors also indicates that the ATF does not have an effective quality control program for checking and reporting on the quality of data entry. Because of the errors, the data in the FLS is difficult to use to track individuals applying to access explosives. The

poor data quality makes it difficult for the ATF to effectively manage the licensing process, generate or rely on standard reports, conduct system searches, or accurately report performance. Those difficulties were evident as the ATF attempted to respond to our data requests and as we attempted to use the FLS data to ascertain whether individuals had been properly processed.

To effectively implement the SEA, the ATF requires a system that accurately and completely tracks and reports on the number of individual Employee Possessors allowed to work with explosives. While we recognize that the ATF issued the explosives licenses and permits required by the SEA timely and carried out the implementation with minimal disruption to the explosives industry, the primary purpose of the SEA is to keep potentially dangerous individuals from obtaining explosives. The system deficiencies we describe above are a major shortcoming that limits the ATF's ability to achieve that primary purpose.

Recommendations

We make the following recommendations to help the ATF improve the implementation of the Safe Explosives Act and more effectively regulate explosives within the United States. The recommendations focus on ensuring that prohibited persons do not have access to explosives.

We recommend that the ATF:

1. Implement procedures to ensure that all Employee Possessor applicants receive a thorough background check.
2. Establish milestones and controls to ensure that Employee Possessor applicants do not remain in a "pending" status in the FLS for extended periods. As an immediate action, NLC management should regularly generate an aging report for pending cases, setting priorities for resolving those cases that have been in a pending status for more than 45 days.
3. Implement procedures to ensure the integrity, completeness, and accuracy of the Employee Possessor information in the FLS. To correct the current data problems, the ATF should conduct a 100 percent cross-match of the names of individuals issued licenses and permits by the ATF with the names of individuals on whom the FBI conducted NICS checks, and then:

-
- Conduct background checks on any individuals contained in the ATF licensing system but not confirmed as having been checked by the FBI.
 - Immediately recheck the license status of all individuals determined by the FBI to be prohibited persons and ensure those individuals are denied access to explosives.
 - For any individual that the FBI has recorded a NICS background check under the NLC's NICS user identification number, but for whom the ATF has no record in its licensing system, determine whether the person is involved in the explosives industry. If the person is, enter the individual into the ATF's licensing system, and, if not, conduct an investigation to determine who may have performed the background check and why.
4. Implement quality control procedures, data entry protocols, and system modifications to ensure FLS data accuracy, including:
 - Modification of the FLS to ensure that an Employee Possessor has only one status, system-wide, no matter how many licenses or permits are associated with the individual.
 - Modification of the FLS to prevent the entry of illogical or incomplete data.
 5. Use existing NLC Employee Possessor information to provide a monthly listing to each Field Division of the licensees in their jurisdiction, the number of Employee Possessors, and the date the company last reported an Employee Possessor to determine the most egregious cases of licensees who have failed to notify the ATF of new hires.
 6. Take action to ensure that there is no unauthorized or inappropriate use of the FBI NICS E-Check system. As an immediate action, the ATF should cancel the NLC's NICS user identification number and assign unique user identification numbers to each individual responsible for conducting the checks.

The ATF did not adjudicate appeals timely from individuals seeking reconsideration of their prohibited person status. The ATF's procedures for conducting inspections of explosives licensees will not identify all Employee Possessors who have become prohibited since their last background check. Moreover, although the ATF has revised its explosives training for Inspectors, it will take up to seven years before all Inspectors attend the revised training. Finally, the ATF has made little progress in implementing the provisions of the SEA that authorized the collection and cataloging of samples of explosives at the ATF National Forensic Science Laboratory.

The ATF does not adjudicate appeals timely from individuals seeking reconsideration of prohibited person status.

We found that the ATF was not adjudicating Relief of Disabilities applications in a timely manner. Individuals prohibited from possessing explosives can apply to the ATF's Explosives Relief of Disabilities (ROD) Section for "relief" from federal regulations (i.e., an exception that will allow them to possess explosives notwithstanding the prohibiting factors). The ROD Section sends completed applications to the ATF Field Divisions responsible for the geographic area in which the applicants reside.

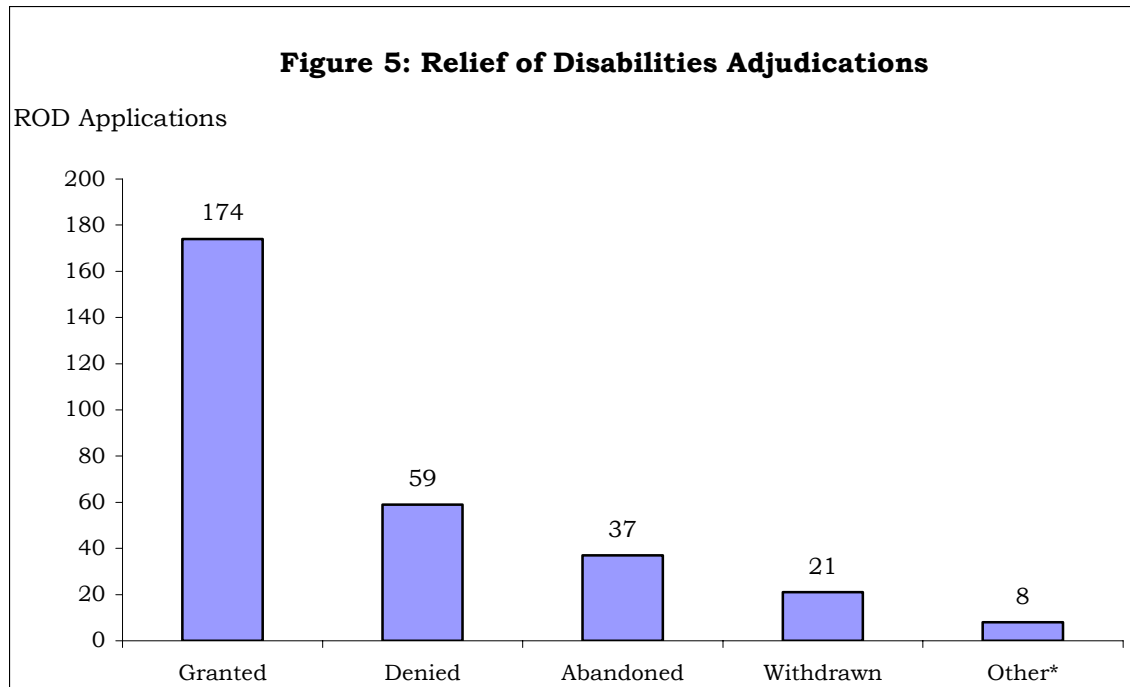
At the Field Division, ATF personnel perform an Application Investigation on the applicant; query NICS, Interpol, and Secret Service databases; and forward fingerprint cards to the FBI to determine the applicant's criminal history. Upon completion of the Application Investigation, the investigator submits a report to the ATF Resident Agent in Charge for review. A Report of Investigation is then forwarded to the ATF Special Agent in Charge, who makes a recommendation on whether the applicant's explosives privileges should be restored. Once the completed Report of Investigation is returned to the ROD Section, the case file is sent to the ATF Deputy Assistant Director, Enforcement Programs and Services, who makes the final ATF determination to approve or deny the application.⁶⁶

⁶⁶ Applicants have the right to appeal ATF decisions to deny relief to a United States District Court. Only one individual has appealed the ATF's decision. In that case, the Court upheld the ATF's decision to deny relief from disabilities

As of January 2005, the ATF had not promulgated final regulations for processing applications for Relief of Disability. However, office procedure documents accompanying ATF Draft Order 3320.5 provided timelines for processing applications, including field investigations and review by ATF Headquarters. According to the timelines in the office procedure documents, applications should be investigated and adjudicated within a total of 74 days. According to the procedure documents, ROD Reports of Investigation “should be thorough and should be completed in as expeditious a manner as possible without compromising investigative thoroughness,” which the documents define as 60 days.⁶⁷ The procedure also allowed 14 days for Headquarters review and adjudication.

To assess the timeliness of the ATF’s processing of applications for relief, we compared processing times for adjudicated cases to the timelines accompanying the Draft Order. From the implementation of the SEA through September 1, 2004, 453 individuals applied for Relief of Disabilities. Of those, 299 (66 percent) had been adjudicated by the ATF, with most requests being granted. (See Figure 5, next page.) We found that the adjudication times ranged from 1 day (for a case in which the applicant withdrew his application) to 443 days (in which the applicant was granted relief). Of the 299 cases, 21 were adjudicated in 74 days or less, 265 were adjudicated in between 75 and 180 days, and 13 cases took more than 180 days to adjudicate. Overall, the ATF took an average of 150 days to investigate and adjudicate the applications for Relief of Disabilities. We determined that most of the time taken to adjudicate the cases was attributable to the time taken by ATF Special Agents to complete their investigations.

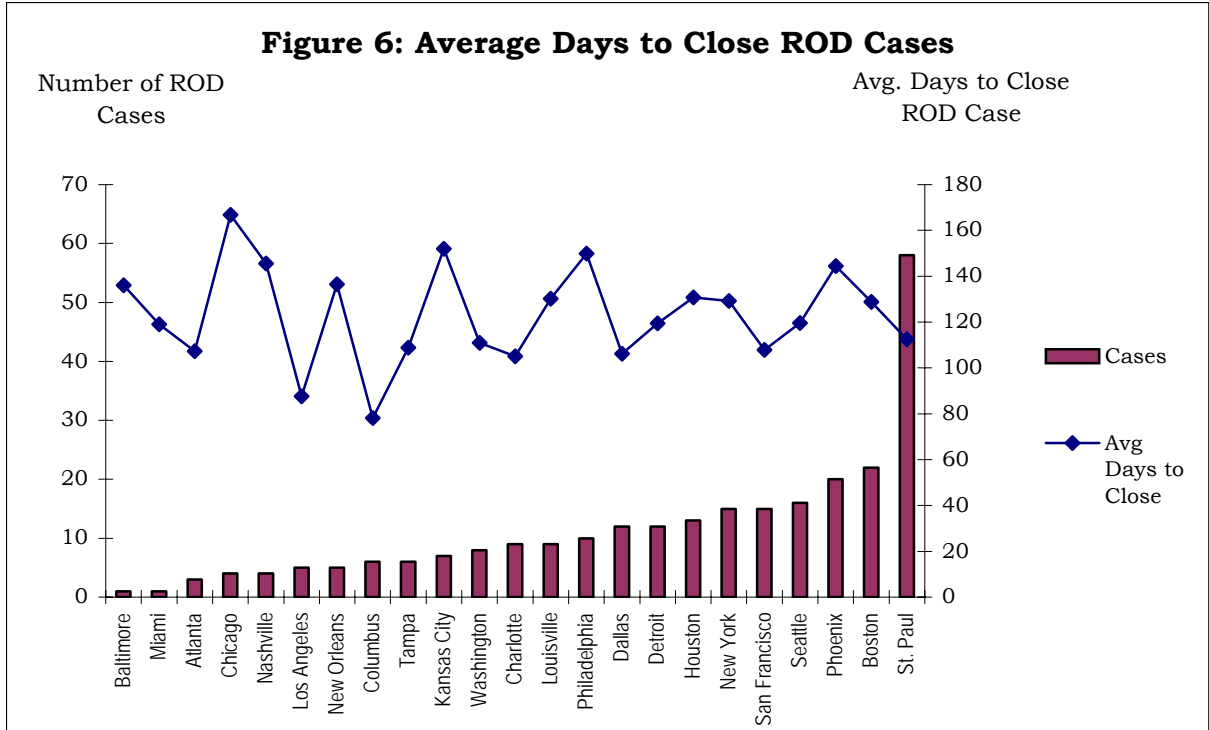
⁶⁷ Besides interviewing applicants about the circumstances related to why they are prohibited to possess explosives, Special Agents are advised to interview, where applicable, character references, business competitors, spouses, employers, former employers, neighbors, parole officers, prosecutors, case agents, and psychiatrists, among others.



Source: ATF Public Safety Branch.

* Includes individuals determined not to be prohibited from possessing explosives.

In commenting on the time taken to process ROD applications, the ATF Deputy Assistant Director, Enforcement Programs and Services, stated that some Field Divisions are currently overburdened with ROD applications and, therefore, are unable to complete Application Investigations in a timely manner. We found that was not the case. We did confirm that the number of ROD applications assigned to each Field Division from February 2003 through July 2004 varied widely, ranging from one application (Baltimore and Miami Field Divisions) to 58 applications (St. Paul Field Division). However, we found that there was no correlation between a Field Division’s ROD investigation workload and the average time that the Field Division took to process its ROD cases. (See Figure 6, next page.)



Source: ATF Relief of Disabilities Section. Note: “Average days to close” is defined as the period from the date the application was received at ATF Headquarters to the date that the case was finally adjudicated.

Delays in processing ROD applications can cause problems for individuals who work in the explosives industry, as well as for their employers. Unlike the processing of the initial applications of Employee Possessors, who continue to have access to explosives while their applications are pending, denied Employee Possessors who are awaiting adjudication of a ROD application are prohibited from possessing explosives. As a result, their employers have to either reassign the individuals to positions where they do not have access to explosives or dismiss them from employment. However, almost 60 percent of the ROD cases decided by the ATF as of January 2005 resulted in grants of relief from the initial decisions to classify the individuals as prohibited persons. Therefore, timely processing is essential to minimize unnecessary disruptions to Employee Possessors’ careers, as well as to the operations of their employers.

ATF inspection procedures are inadequate to identify Employee Possessors who have become prohibited persons since their last background check.

In addition to ensuring that new employees are not prohibited persons, the ATF must ensure that previously reported employees have not become prohibited persons since their initial background check. Although the ATF work plan for compliance inspections contains steps to identify new employees, the work plan is not adequate to ensure that Inspectors identify previously reported Employee Possessors and Responsible Persons who have become prohibited persons since their initial ATF background check. Inspectors are instructed only to conduct “random” background checks on Employee Possessors and Responsible Persons to verify that they have not become prohibited persons since their last NICS background check. The ATF work plan does not specify how the random sample is to be selected or the number of random checks that should be conducted. Further, the work plan does not require that Inspectors query NICS to conduct these rechecks. Instead, Inspectors are instructed to access the Treasury Enforcement Communications System and the National Crime Information Center. Checks of these two systems, however, are not as comprehensive as the NICS E-Checks utilized by NLC personnel.⁶⁸

The ATF procedures for processing license renewal also are not adequate to ensure that Employee Possessors are checked to ensure they have not become prohibited persons. The ATF requests

The ATF National Repository Could Be Used to Improve Inspections of Explosives Licensees and Permit Holders.

During the course of our review, we determined that ATF Inspectors do not consistently review the ATF Arson and Explosives National Repository’s electronic database of explosives incidents and thefts (the Arson and Explosives Incidents System [AEXIS]), prior to performing an explosives compliance inspection. ATF Inspectors could use information from AEXIS to determine whether a licensee has reported any thefts or missing explosives, but only one of the Inspectors we questioned stated that he routinely queried the database.

Repository staff said they have encouraged Directors of Industry Operations, Area Supervisors, and Inspectors to use AEXIS. Despite this, the Intelligence Research Specialist who manages AEXIS stated that few Inspectors have even registered to gain access to the database.

⁶⁸ Besides NCIC information, a NICS E-Check queries sources of information on individuals dishonorably discharged by the Department of Defense and individuals adjudicated mentally defective, as well as Department of State information on individuals who have renounced their United States citizenship. See Background section for more discussion on this subject.

NICS background checks on all Responsible Persons when an explosives license or permit is renewed. As of November 2004, the Chief of the NLC told us that the ATF was considering how to update the renewal application form, including whether to require Employee Possessors to re-submit Employee Possessor Questionnaires, which provide the NLC the information with which to query NICS. At a meeting with ATF Headquarters officials in January 2005, the OIG Inspection Team was informed that the ATF recently decided to re-check Employee Possessors through the NICS database. Since the ATF assumes that sufficient personal information on existing Employee Possessors is already available in the FLS, the ATF stated that it does not plan to require existing Employee Possessors to resubmit an Employee Possessor Questionnaire. Instead, the ATF will require licensees to submit an “employee list” with their renewal application.

We are concerned that the plans described by the ATF will not enable it to accurately conduct background checks on Employee Possessors at license renewal. During this review, the ATF encountered considerable difficulties (discussed earlier in this report) in reconciling data and providing accurate information on the numbers and status of current Employee Possessors in response to our requests. Our review showed that the FLS cannot be relied on for determining the current status of Employee Possessors, as over 30 percent the individuals we sampled did not have the results of their background check entered in the FLS (see previous findings, p. 27). Moreover, we found that many licensees do not appear to be informing the ATF of new hires, so there are likely to be considerable mismatches between FLS records of employees and the actual rosters of the companies.

Using current records to match against a list of Employee Possessor names will also be difficult because the ATF does not ensure that names are entered in a standard manner and does not require Social Security numbers from Employee Possessors. Consequently, the ATF cannot electronically compare current Employee Possessors in the FLS with a licensee-produced list. Instead, each name on the list will have to be manually checked against the FLS by an NLC Legal Instrument Examiner. That check will be onerous. Among other things, the Examiners will have to determine whether similarly named individuals are, in fact, one person; ensure that individuals associated with multiple licenses are accurately documented in every record; deactivate former Employee Possessors from the FLS; ensure that all new hires have completed Employee Possessor Questionnaires; and perform and enter the results of NICS E-Checks. Because of the above

deficiencies, we believe the ATF's planned renewal process will be prone to inaccuracies and difficult to properly manage.

We also noted that, as of February 2005, the ATF had not informed licensees of its planned renewal procedures. If these procedures are implemented, over time, licensees will be required to track who in their workforce is an Employee Possessor and whether he or she has submitted an Employee Possessor Questionnaire. Therefore, if licensees are required to produce lists of employees other than standard lists produced by their personnel management information systems, they will require sufficient notice to reprogram these systems or manually produce these lists.

It will take up to seven years for all ATF Inspectors to complete the ATF's revised explosives training course.

After the SEA was enacted, the ATF expanded its Advanced Explosives Training course for ATF Inspectors from seven to ten days and enhanced the training to include more product identification information. In addition, the ATF told us that it intends to have all ATF Inspectors eventually attend the revised Advanced Explosives Training course.⁶⁹ The class, which accommodates 30 students, is offered three times per year.⁷⁰ The ATF stated that it plans to have 600 Inspectors on board by January 2006.

As of January 2005, 321 Inspectors have taken the Advanced Explosives Training course, but only 74 of those took the revised course. Assuming that none of the 247 Inspectors who took the unrevised course take the revised course, it will take three years for all new ATF Inspectors to attend the Advanced Explosives Training course. If the ATF carries out its stated plan to have the 247 Inspectors who took the unrevised course attend the revised training, it will be seven years before all ATF Inspectors have attended the revised course.

⁶⁹ Because of the major changes to the Advanced Explosives Training course, Inspectors who attended the training prior to 1999 were encouraged to retake the course. The Program Manager, Industry Operations Training Branch, told the OIG Inspection Team during our field work that the Advanced Explosives Training has changed a lot since 1999. She recommended that those who attended the earlier training should re-attend the revised course.

⁷⁰ ATF officials stated that not all training slots are allocated for ATF Inspectors. For instance, employees from the Mine Safety and Health Administration, the Consumer Product Safety Commission, and other agencies are allowed to attend the Advanced Explosives Training course. On average, these non-ATF trainees occupy five slots per course, according to ATF training officials.

Even though the enhancements to the Advanced Explosives Training course are expected to improve the skills of ATF Inspectors, ATF managers told us that they are concerned that the ATF still will lack a core group of Inspectors with in-depth knowledge to oversee large-scale or complex explosives inspections. The Director of the Enforcement Programs Branch stated that he would like at least one Inspector in each of the ATF's Area Offices to be provided with "more specialized, advanced training beyond the Advanced Explosives Training course, which is basic."

Several of the Inspectors we interviewed told us that they do not receive enough training on explosives products. For example, one Inspector stated that she learns about new explosives products from licensees. ATF Headquarters officials confirmed that learning about explosives products from licensees is a knowledge acquisition strategy. Almost all of the Inspectors we interviewed told the OIG that, at a minimum, they need refresher training and that they also need better access to advanced explosives training. Even Inspectors who have attended the Advanced Explosives Training course stated that they do not feel qualified to address all of the issues they encounter during the course of inspections. The most frequently cited issue causing difficulty for the Inspectors was calculating the quantities of explosives permitted in storage magazines, based on magazine type and location, according to ATF regulations.

The OIG Inspection Team found that the ATF's strategy was not always clear to or well-received by explosives licensees. Industry members we spoke with stated that they believed ATF Inspectors needed better training. They were not aware that acquiring knowledge from licensees was part of the ATF's overall Inspector training strategy. For example, several industry representatives told us that they do not feel Inspectors are adequately trained to inspect various types of explosives. One representative stated that he has to train Inspectors on the products they inspect at his facilities.

The ATF has taken steps to improve product knowledge among Inspectors and supervisors. During this review, the OIG attended the Directors of Industry Operations and Area Supervisors Explosives Training held from August 30 through September 2, 2004, in Providence, Rhode Island. Among other topics, the training provided a half day of instruction on product identification and use. In addition, the training included the use of “Team Inspections,” an approach developed to supplement the small number of available expert Inspectors necessary to conduct large and complex explosives inspections.⁷¹ (See text box.)

Northeast Inspection Team

The ATF developed the Northeast Inspection Team (NEIT) in 1993 so that large-scale or complex explosives licensee inspections would be conducted consistently across multi-site license holders by well-trained Inspectors. According to its charter, the NEIT’s mission “is not to replace inspection and intelligence activities at the local level; rather, it is intended to enhance these capabilities.”

The NEIT comprises 16 Inspectors from 6 ATF Field Divisions located throughout the northeastern United States. NEIT members volunteer for the team.

The NEIT is dispatched at the request of Directors of Industry Operations and Area Supervisors with the approval of ATF Headquarters officials. Inspection teams comprised eight NEIT members and, until 2004, did not travel outside of the northeastern United States.

ATF Inspectors’ interpretations of explosives regulations lack consistency. After the enactment of the SEA, the ATF trained every Inspector on the provisions of the Act.⁷² However, ATF Headquarters officials, licensees, and industry representatives told us that issues still exist regarding the consistency of Inspectors’ regulatory interpretations. For example, one licensee that operates nationwide stated that because ATF Inspectors conduct inspections and interpret regulations differently at various locations, he cannot develop a consistent corporate policy to

⁷¹ Prior to the passage of the SEA, a majority of the Area Offices we visited relied on one or two Inspectors to conduct most large-scale or complex explosives compliance inspections. These Inspectors were considered experts in the area of explosives because of their experience and training.

⁷² The ATF had 180 days from the passage of the SEA to fully implement its provisions, and the SEA included no specific funds for its implementation, including no training funds. To ensure that all Inspectors fully understood the provisions and requirements of the SEA, the ATF developed a SEA training program. Because of time constraints and a lack of budget resources for the training, the ATF Industry Operations Training Branch developed a program based on a “train the trainer” approach.

comply with ATF regulations. Another industry member we spoke with complained that an ATF Inspector cited his company for storing explosives too close to an “inhabited building” (a garage), although prior Inspectors over almost 20 years had never categorized the structure as an “inhabited building.” Whether the change in the category was correct (either because the latest Inspector noted changed circumstances or the prior Inspectors had been mistaken), the licensee told us that the reasons for the new determination had not been made clear to him.

An ATF official confirmed that the ATF is aware that Inspectors from different Field Divisions often offer inconsistent regulatory interpretations to explosive licensees and permit holders. When we asked the reason for the inconsistency, he stated, “I don’t know if it’s the training or the new people.... Inspectors need to be able to point to regulations and fairly explain the meaning of the regulation and the possible impact of not complying with the regulation.” He further stated that some Inspectors do not understand the rulemaking process. For example, the Notice of Proposed Rulemaking issued by the ATF prior to the SEA has been cited prematurely by Inspectors on numerous occasions as an in-force regulation.

The ATF has made little progress in implementing the provisions of the SEA that authorized the collection and cataloging of samples of explosives at the ATF National Forensic Science Laboratory.

The SEA granted the ATF the authority to collect samples of explosives and ammonium nitrate from manufacturers and importers.⁷³ According to ATF Headquarters and National Forensic Science Laboratory (National Laboratory) officials, the authority to collect samples was intended to enable the ATF to develop databases of explosives information and increase the ATF’s ability to trace explosives used in crimes. During a June 2002 congressional hearing, the Acting ATF Director testified that a library of explosives information “is essential to ATF’s ability to prevent and solve bombings and to trace explosive materials used in terrorist activities and other violent crimes by matching residue with the manufacturers’ samples.”⁷⁴ At the same hearing, the

⁷³ Additionally, the SEA granted the ATF the authority to collect information on the chemical composition of explosives as well as product information, such as packaging and brochures.

⁷⁴ Testimony by Bradley Buckles before the House of the Representatives, Committee on the Judiciary, Subcommittee on Crime, Terrorism, and Homeland Security, hearing on H.R. 4864, the Anti-Terrorism Explosives Act of 2002, June 11, 2002.

Department of the Treasury Assistant Secretary of Enforcement stated that the creation of such a library would afford the ATF “the opportunity to solve, and perhaps prevent, future criminal and terrorist acts using explosives.”⁷⁵ The Chief of the National Laboratory reiterated the need for current explosives libraries during our inspection. He stated that the National Laboratory’s high-explosive gunpowder database is outdated and that the National Laboratory’s “biggest problem” is its inability to trace ammonium nitrate.

However, we found that the National Laboratory has only recently developed a systematic approach to collect, analyze, and catalog samples of explosives as permitted by the SEA. During our review, the Director of the National Laboratory told us that the ATF has only used its authority to collect samples one time – to collect a model rocket motor. As of the completion of our field work, the National Laboratory had not collected or developed a systematic approach for collecting samples of ammonium nitrate.

Moreover, as of the completion of our field work in August 2004, the ATF had developed minimal plans for collecting explosives samples and creating the libraries of information authorized by the SEA. We found that the National Laboratory’s plans to develop the databases consisted only of a four-page document, written in 2002, which described the potential use of explosives databases and the roles of the three chemists and one program manager needed to oversee them. The ATF had yet to develop comprehensive plans, funding requests, industry notices, proposed regulations, or any other documents necessary to implement the authority granted under the SEA. The ATF Director of Laboratory Services stated that the National Laboratory’s plans to implement this aspect of the SEA were contingent on funding and had not been reexamined since passage of the Act.

Planning for an electronic database to house explosives information collected by the laboratory began in late August 2004. As part of this review, the OIG contacted National Laboratory staff to determine what, if any, progress had been made by the ATF to carry out laboratory-related functions authorized by the SEA. On September 30, 2004, the ATF signed a contract with a software consulting firm to design

⁷⁵ Testimony by Kenneth Lawson before the House of the Representatives, Committee on the Judiciary, Subcommittee on Crime, Terrorism, and Homeland Security, hearing on H.R. 4864, the Anti-Terrorism Explosives Act of 2002, June 11, 2002.

the database.⁷⁶ According to the National Laboratory's October 12, 2004, operating plan, the ATF plans to formalize protocols for gathering information from explosives manufacturers by June 2005 and, by July 2005, develop a prototype of the explosives database. At a meeting with ATF Headquarters officials in January 2005, however, the OIG was informed that the National Laboratory had only recently begun the planning process for both the collection and analysis activities.

One of the critical steps toward the collecting and analyzing of explosives is the construction of an explosives storage facility. During our review, the ATF had not begun planning this initiative. Subsequent to the completion of the OIG's field work in this review, the National Laboratory began the planning process for constructing an explosives storage facility, the first step toward enabling the laboratory to collect and analyze explosives samples. In October 2004, the ATF contracted the services of an engineering consultant to discuss and finalize designs for an explosives storage facility at the laboratory.

The ATF's progress at establishing a National Explosives Licensing Center (NELC).

In the ATF's FY 2004 appropriations, Congress authorized the ATF to create the NELC, stating, "The conference agreement includes ... \$4,000,000 to upgrade databases and systems, space alterations, and other costs related to creating the National Explosives Licensing Center ... at the Bureau of Alcohol, Tobacco, Firearms and Explosives National Tracing Center."⁷⁷ The ATF selected a Chief for the NELC in October 2003. The Chief stated that, "on paper," he assumed the title of Chief in October 2003, but said that he continued his previous ATF duties at the National Tracing Center until he was assigned staff.⁷⁸ In May 2004,

⁷⁶ On September 30, 2004, the ATF signed a contract with Systems, Services & Designs, Inc., an 8(a)-certified service disabled veteran-owned company, to design an electronic database of explosives information collected at the laboratory. According to the contract, the firm will "analyze existing databases of information related to the formulation of explosives and smokeless powder, determine the functionality required by ATF field agents, and identify additional information that is available to characterize explosives and smokeless powder formulation. In addition, [the company] will consider relevant database designs and formulate user interface requirements during development of the working prototype."

⁷⁷ House Report 108-401.

⁷⁸ The National Tracing Center, located in the same building as the NELC, works with law enforcement agencies, firearms manufacturers, and gun dealers to determine the manufacturing and sales history of firearms used in crimes.

seven months after being appointed, the Chief traveled to Atlanta to observe NLC operations for two weeks. The Chief stated that during the visit he met “with Examiners and Contractors to develop an overview of NLC operations.” When asked about his activities since being named to head the NELC, the Chief stated that he had spent a considerable amount of time ordering equipment and overseeing budgetary issues.

In July 2004, the NLC began transferring licensing authorities for new license applications – not renewal applications – to the NELC. As of October 2004, the NLC has transferred these authorities for 32 states to the NELC. However, as of September 2004, the Chief told us that he had not yet developed any plans, timelines, or reports related to the transfer of the remaining explosives licensing authorities to the NELC. Nonetheless, the Chief stated that he expects the NELC to be fully operational by August 2005. However, in September 2004, the ATF Deputy Assistant Director, Enforcement Programs and Services, told the OIG Inspection Team that the NELC will be fully operational “as soon as they are able to handle it.” The Deputy Assistant Director said, “It will take some time. I don’t know when.” In January 2005, ATF Headquarters officials stated that the NELC was developing detailed plans for the full transfer of licensing operations. However, we have not seen these plans.

To help us assess the adequacy of the planning activities related to the establishment of the NELC, we met with management staff at the NLC. The NLC carries out firearms licensing functions within the ATF and has been handling explosives licensing functions pending the establishment of the NELC, and are therefore well aware of the requirement for implementing a full-scale licensing function. They stated that, in their opinion, the NELC is not prepared to handle issues beyond basic licensing. An NLC Program Analyst stated that the NELC has yet to prepare for basic activities such as the delivery of application materials, the handling and storage of inspection reports, data issues, printing and controlling Type 60 permit coupons, processing address changes, and numerous other functions.⁷⁹

We also found that the ATF had not promptly trained the Chief and staff of the NELC. Two NELC Examiners – one hired in January 2004,

⁷⁹ Among other issues, the Program Analyst noted that the ATF needs to determine NELC policies for managing official correspondence with licensees and permit holders, communications with law enforcement officials, and arrangements with the bank contracted to accept license and permit payments.

the other in February 2004 – visited the NLC in June 2004 to observe the operations there. The NLC staff members we spoke with described the June 2004 visits by the NELC staff members as basic. One NLC staff member described the June 2004 visit as a “cursory introduction” to the ATF’s licensing operations. We also found that the ATF did not begin to develop a training plan for the Chief and NELC staff until September 2004, almost a full year after the Chief was selected. As of October 2004, the ATF had not scheduled training for NELC staff.

The ATF’s timetable for transferring explosives licensing functions from the NLC to the NELC may be affected by recent Congressional direction to move the NLC. As part of the Consolidated Appropriations Act of 2005, P.L. 108-447, December 8, 2004, the ATF received \$5.6 million “for the construction and establishment of the Federal Firearms Licensing Center at the Bureau of Alcohol, Tobacco, Firearms and Explosives National Tracing Center Facility.” This means that the ATF NLC will be moved from Atlanta, Georgia, and collocated with the NELC in West Virginia.

Recommendations

We make the following additional recommendations to help the ATF improve the implementation of the Safe Explosives Act and more effectively regulate explosives within the United States. The recommendations focus on improving the consistency of the ATF’s oversight activities, completing the establishment of an explosives licensing center, and implementing a process for collecting and cataloging explosives at the ATF National Laboratory.

We recommend that the ATF:

7. Improve the consistency of regulatory determinations by designating a single point of contact at ATF Headquarters for Inspectors and explosives industry members. The point of contact should maintain a history of regulatory inquiries and post frequently requested information on the ATF’s website.
8. Examine alternatives for speeding the delivery of the ATF’s Advanced Explosives Training course to all Inspectors, and develop a curriculum to build explosives expertise within the ATF’s Inspector workforce.
9. Develop a detailed timeline for accomplishing the actions necessary to complete the implementation the National Explosives

Licensing Center in Martinsburg, West Virginia, including the implementation of changes to the licensing and background check processes, the adjudication process for Employee Possessors, and the data systems that will support these processes.

10. Develop comprehensive plans, funding requests, industry notices, proposed regulations, and other necessary documents to implement the authority granted under the SEA to collect and catalog samples of explosives at the ATF National Laboratory.

ADDITIONAL ISSUES

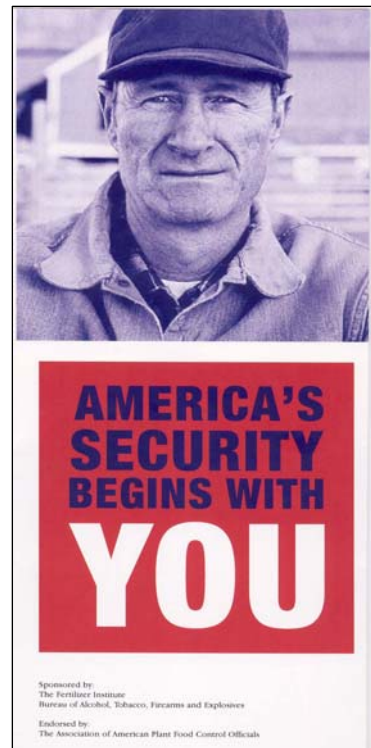
In conducting this review, we identified several issues related to the regulation and safeguarding of explosives in the United States that while not addressed in the SEA nonetheless are relevant to public safety. The following summarizes issues regarding explosives not currently subject to ATF regulation and the limits of the ATF's authority to inspect explosives storage facilities.

The ATF lacks the authority to regulate ammonium nitrate and some commonly used explosives. The ATF does not have the authority to regulate ammonium nitrate, binary explosives, and black powder in quantities of less than 50 pounds.

Ammonium Nitrate. The ATF lacks the authority to regulate ammonium nitrate, other than being authorized to collect samples from manufacturers. This fertilizer, commonly used by farmers, can cause a massive explosion when mixed with diesel fuel oil. For example, the 1995 bombing of the Murrah Federal Building in Oklahoma City was carried out with an illegally constructed ammonium nitrate and fuel oil bomb. Nearly 4,800 pounds of ammonium nitrate were used in that bombing. Approximately 220 pounds of ammonium nitrate were used in the 2002 terrorist bombing of a Bali nightclub.

In July 2004, the ATF worked with The Fertilizer Institute and the Association of American Plant Food Control Officials in launching the "America's Security Begins with You" campaign. The campaign urges those who handle ammonium nitrate to implement security plans, maintain sales records, and alert the ATF of suspicious activity through a toll-free hotline. (See pamphlet cover at right.) The Chief of the ATF's Explosives Industry Programs Branch stated that the program promotes "increased vigilance" among those who sell and use ammonium nitrate fertilizer.

Exhibit 3: Cover of Pamphlet Sent to Farmers by the ATF



The Ammonium Nitrate Security Act was introduced in Congress in September 2004 to require licenses for sellers of ammonium nitrate,

permits for purchasers of the fertilizer, and to authorize the ATF to inspect ammonium nitrate storage facilities.⁸⁰ The bill would also require manufacturers, distributors, and retailers to immediately report losses of ammonium nitrate to the ATF. Congress recessed without taking action on the proposed legislation. However, the bill was recently reintroduced in the 109th Congress.

Binary Explosives. Binary explosives are explosives created by combining two chemicals that are not, by themselves, explosive. Because binary explosives need not be mixed until needed, they are safer to store and transport. Typically, they are made from prepackaged chemical ingredients, including oxidizers and flammable liquids or solids. Until the compounds are mixed, they are not classified as explosives and, therefore, are not subject to ATF regulation. However, once mixed, binary explosives are subject to applicable federal requirements. A person who regularly and continually combines compounds of binary materials to manufacture an explosive (such as a large mining operation that conducts mixing operations on site) is considered to be engaged in the business of manufacturing explosives and is required to be licensed as a manufacturer.

Black Powder and Smokeless Powder. The ATF licenses manufacturers and sellers of black powder, an explosive commonly used in muzzle-loading firearms. However, other than requiring that purchasers be at least 21 years old, the ATF has no authority to regulate sales of less than 50 pounds of black powder. Because black powder is relatively inexpensive (between \$5 and \$15 per pound), it is the most common explosive used in pipe bombs. Additionally, the ATF does not regulate smokeless powder, a more expensive explosive used in the manufacturing of firearms ammunition. Developed in the late 19th century to replace black powder, smokeless powder leaves minimal residue in a gun barrel following its use. Approximately 10 million pounds of commercial smokeless powders are produced in the United States each year. The powder is about eight times as expensive as black powder.

The ATF does not have the authority to inspect all government-owned explosives storage facilities. The ATF is authorized to conduct regulatory inspections of explosives licensees and permit holders.⁸¹

⁸⁰ H.R. 5140.

⁸¹ 27 C.F.R. Part 555.24.

However, federal, state, and local government agencies are exempt from ATF licensing and permitting requirements, although most are required by law to store explosives in accordance with federal regulations.⁸² Therefore, according to ATF Headquarters officials, the ATF only inspects government-owned explosives storage facilities when the owners of these magazines invite the ATF to perform inspections. According to the ATF's Deputy Assistant Director, Enforcement Programs and Services, ATF Inspectors conducted 39 inspections of government-owned explosives storage facilities during FY 2003.

The ATF has not cataloged the number of government-owned explosives storage facilities in the United States. The ATF, itself, operates 188 explosives storage magazines. There are far more magazines operated by federal, state, and local law enforcement agencies, which store explosives as evidence and for training purposes. ATF Headquarters officials also stated that many transportation departments and public universities maintain storage magazines.

In August 2004, one month after explosives were stolen from state- and federally-owned magazines in California, the House Committee on Government Reform examined the issue at a field hearing in California.⁸³ In September 2004, two members of the Committee introduced a bill entitled, The Law Enforcement Explosives Storage Enhancement Act.⁸⁴ The bill would have required security systems at magazines owned by law enforcement agencies and would also have required states to report to the ATF the locations of these magazines. The bill did not address explosives storage facilities owned by government agencies not deemed law enforcement agencies. Also in September 2004, a bill was introduced that would expand the ATF's control of explosives to include detonable nitrate fertilizers.⁸⁵ Both bills would have had significant impact on the ATF's operations and resources. Congress recessed

⁸² 27 C.F.R. Part 555, Subpart K – Storage. According to 18 U.S.C. § 845(a)(6), federal government agencies are exempt from explosives storage requirements.

⁸³ Homeland Security: Surveillance and Monitoring of Explosive Storage Facilities, Field Hearing Before the House Committee on Government Reform, Subcommittee on National Security, Emerging Threats and International Relations, San Mateo, CA, August 2, 2004.

⁸⁴ The bill – H.R. 5162 – was introduced in the House of Representatives on September 29, 2004.

⁸⁵ The bill – H.R. 5140, Ammonium Nitrate Security Act – was introduced in the House of Representatives on September 23, 2004.

without taking action on the bills. As the OIG Inspection Team was finalizing this report, the Government Accountability Office (GAO), at the request of the sponsor and one co-sponsor of the Law Enforcement Explosives Storage Enhancement Act bill, initiated a review of the safety and security of government-owned explosive storage facilities.⁸⁶

We believe the ATF should critically consider the legislative proposals and coordinate with the Department's Office of Legislative Affairs on the Department's position with regard to these proposals.

⁸⁶ At an entrance conference to discuss the review with ATF Headquarters officials in February 2005, GAO staff stated that the review would preliminarily focus on explosives stored by law enforcement agencies. However, after discussing the scope of the review, the ATF urged the GAO to also examine the condition of explosives storage facilities maintained by state departments of transportation, state divisions of natural resources, and colleges and universities.

APPENDIX I: DOMESTIC AND FOREIGN BOMBING INCIDENTS

Domestic bombing incidents

According to data we obtained from the ATF's Arson and Explosives National Repository, law enforcement agencies in the United States reported 349 non-incendiary bombing incidents in 2002, 362 in 2003, and 160 in the first nine months of 2004. The most common substances used in these bombings were black powder, flash powder, or common chemicals contained in household products that were combined to make an explosive mixture.⁸⁷ Over the almost 3-year period, these substances accounted for 54 percent of all explosive materials used in illegal actual bombing incidents.⁸⁸ Of all bombings reported to the ATF, 18 percent involved explosives subject to the provisions of the SEA. Of these, 91 percent of the incidents involved common fireworks or their components. Pipe bombs were used in 47 percent of all reported bombings.

According to National Repository data, 8 people were killed and 49 people were injured by explosives from January 2002 through December 2004. Explosive powders, which may be obtained legally in quantities up to 50 pounds without a license or permit, were the largest cause of deaths and injuries. Over 50 percent of those killed and injured during this period were victims of explosive devices containing black powder. Twenty-five percent of those injured were victims of improvised explosives devices, many of which containing common chemicals.

Non-domestic terrorist use of explosives

The use of explosives is common in terrorist acts committed abroad. According to Department of State reports, 43 of 355 attacks in

⁸⁷ The SEA did not change the regulations governing explosive powders that may be easily and legally obtained in quantities up to 50 pounds without a license or permit.

⁸⁸ These totals include only actual bombings in which the bombs' primary component was something other than a flammable liquid. Since incendiary bombings involve combustible materials that fall outside of the scope of the SEA, they were not included. In addition, the totals do not include attempted bombing (incidents in which an unexploded device was discovered) or premature explosions (incidents in which the explosive device detonated before the bomber intended, usually injuring the bomber). If all of the above categories were included, the total number of bombings would have been 492 in 2003, 469 in 2002, and 239 in the first nine months of 2004.

2001 involved explosives, 83 of 198 in 2002 involved explosives, and 102 of 208 in 2003 involved explosives. In the 2003 attacks, a total of 625 persons were killed and 3,646 wounded. While the number killed was 100 fewer than the 725 killed during 2002, there was a sharp increase of more than 1,600 in the number of persons wounded (2,013) in 2002. Thirty-five U.S. citizens died in international terrorist attacks in 2003. Of the 35, 26 were killed in bombings.

According to Department of State data, the 2003 increase resulted from numerous indiscriminate attacks on “soft targets,” such as places of worship, hotels, and commercial districts that were intended to produce mass casualties. Based on the descriptions of terrorist incidents contained in the State Department’s 2003 “Patterns of Global Terrorism” report, we determined that:

- 20 incidents involved bombs or explosives in vehicles;
- 27 incidents involved military ordinance (grenades, rockets, or land mines);
- 9 incidents involved suicide bombers (non-vehicular);
- 14 incidents involved unknown bombs or devices targeting buildings; and
- 32 incidents involved unknown bombs or devices targeting people.

APPENDIX II: EMPLOYEE POSSESSOR QUESTIONNAIRE

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

OMB No. 1140-0072

Employee Possessor Questionnaire

Who needs to complete this form? This questionnaire MUST be completed by EACH employee possessor of a Federal explosives licensee or permittee or applicant, unless otherwise provided. (See reverse for definition of employee possessor.)

For ATF Use Only
RDS KEY:


Employee Possessor Information and Certification	
Print the Requested Information in Block Letters.	Explosives Applicant Business or Operations Name
1. Last Name	14. Name and address of explosives business or operations at which you are an employee possessor.
2. First Name	15. Your position in the explosives business or operations.
3. Middle Name	16. Federal explosives license/permit number for explosives business/operations.
4. Name Suffix, if any (e.g., Sr., Jr., II)	17a. What is your Country of Citizenship?
5. Other Names Used - Including Maiden Name	17b. If you have citizenship in additional countries, please list.
6. Social Security Number (Voluntary, will help prevent misidentification) <input type="text"/> <input type="text"/> <input type="text"/> - <input type="text"/> <input type="text"/> <input type="text"/> - <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/>	If you indicated above you are a United States citizen, skip to question 18.
7. Place of Birth (City and State - or - City and Foreign Country)	17c. What is your U.S. Immigration and Naturalization Service (INS)-issued alien number or admission number? <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/>
8. Date of Birth (Month/Day/Year) <input type="text"/> <input type="text"/> <input type="text"/> / <input type="text"/> <input type="text"/> <input type="text"/> / <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/>	The following questions must be answered with a "YES" or "NO" in the box.
9. Race/Ethnicity (Check one or more boxes)	18. Are you a fugitive from justice?
<input type="checkbox"/> American Indian or Alaskan Native <input type="checkbox"/> Hispanic <input type="checkbox"/> Asian <input type="checkbox"/> Native Hawaiian or Other Pacific Islander <input type="checkbox"/> Black or African American <input type="checkbox"/> White	19. Are you an unlawful user of, or addicted to, marijuana or any depressant, stimulant, or narcotic drug, or any other controlled substance?
10. Sex (Check one box) <input type="checkbox"/> Male <input type="checkbox"/> Female	20. Have you ever been convicted in any court of a felony, or any other crime, for which the judge could have imprisoned you for more than one year, even if you received a shorter sentence, including probation? (See Definition 1, Exception 1.)
11. Home Telephone Number (Include area code)	21. Are you under indictment or information in any court for a felony, or any crime, for which the judge could imprison you for more than one year? (An information is a formal accusation of a crime by a prosecutor. See Definition 1.)
12. Work Telephone Number (Include area code and extension)	22. Have you ever been adjudicated mentally defective (which includes having been adjudicated incompetent to manage your own affairs) or have you ever been committed to a mental institution?
Home Address	
13a. Street Address	23. Have you ever been discharged from the Armed Forces under dishonorable conditions?
13b. Street Address (Continuation)	24. Have you ever renounced your United States citizenship?
13c. Apt. Number	25. Are you an alien in the United States? If "YES," attach an explanatory statement showing that you are a lawful permanent resident. (See Definition 3, Exception 2.) (Generally, if you are an alien [except for a lawful permanent resident alien], you cannot possess explosive materials.) <input type="checkbox"/> Statement attached.
13d. City	
13e. State or Province, Country (if outside the United States)	
13f. Zip Code/Postal Code <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> - <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/>	

Under the penalties imposed by 18 U.S.C. 844, I, _____, Print Your Full Name, certify under penalties of perjury that the answers on this questionnaire are true, correct, and complete.

Your Signature _____ Date _____

ATF Form 5400.28
Revised February 2003

APPENDIX III: NOTICE OF CLEARANCE

 <p>U.S. Department of Justice Bureau of Alcohol, Tobacco, Firearms and Explosives National Licensing Center www.atf.gov</p>	<p>National Licensing Center 2600 Century Parkway NE Atlanta, GA 30345 telephone: (866)662-2750 fax: (866)257-2751 e-mail: NLC@atf.gov</p>	<p>09/04/2003</p>
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NOTICE OF CLEARANCE

for individuals transporting, shipping, receiving, or possessing explosive materials.

ISSUED TO: SAMPLE NOTICE OF CLEARANCE INC	Federal Explosives license/permit no.: 0-MO-000-33-6G-00000
NOTICE DATE: 09/04/2003	Expiration Date: July 1, 2006
EXPIRATION DATE: This Notice expires when superseded by a newer Notice which will list all current responsible persons and employee possessors, or when the license or permit expires - whichever comes first.	
Explosives License/Permit Type: 33-USER OF HIGH EXPLOSIVES	

- 1 **WARNING.** Only those individuals listed below as **RESPONSIBLE PERSONS** and **EMPLOYEE POSSESSORS** with a background clearance status of "CLEARED" or "PENDING" are authorized to transport, ship, receive, or possess explosive materials in the course of employment with you.
- 2 **"DENIED" STATUS.** If an employee possessor has a background clearance status of "DENIED", you **MUST** take immediate steps to remove the employee from a position requiring the transporting, shipping, receiving, or possessing of explosive materials. Also, if the employee has been listed as a person authorized to accept delivery of explosive materials, you **MUST** remove the employee from such list and immediately, and in no event later than the second business day after such change, notify distributors of such change, as stated in 27 CFR 555.33(a).
- 3 **CHANGE IN RESPONSIBLE PERSONS.** You **MUST** report any change in responsible persons to the Chief, National Licensing Center, within 30 days of the change and new responsible persons **MUST** include "appropriate identifying information" as defined in 27 CFR 555.11. Fingerprints and photos are **NOT** required, however they will be required upon renewal of the license or permit.
- 4 **CHANGE OF EMPLOYEES.** You **MUST** report any change of employee/possessors to the Chief, National Licensing Center, within 30 days. Reports relating to newly hired employees must be submitted on ATF Form 5400.28 for **EACH** employee.

SAMPLE NOTICE OF CLEARANCE INC
NOC INC
1234 MAIN STREET
ANYTOWN, MO 12345

This 'Notice of Clearance' is provided to you as required by 18 U.S.C. 843(h) and **MUST** be retained as part of your permanent records and be made available for examination or inspection by ATF officers as required by 27 CFR 555.121. If you receive a Notice subsequent to this Notice, this Notice will no longer be valid.

In accordance with 27 CFR 555.33, Background Checks and Clearances, and 27 CFR 555.57, Change of Control, Change in Responsible Persons, and Change of Employees, ATF's National Licensing Center (NLC) has conducted background checks on the individual(s) you identified as a responsible person(s) and an employee/possessor(s) on your application, or reported after the issuance of your license/permit.

The following is a SUMMARY of the results of the background checks conducted on the individuals you reported as responsible persons and employee/possessors. ATF will be notifying ALL individuals listed on this document of their respective status by separate letter mailed to their residence address.

PLEASE BE ADVISED THAT IT IS UNLAWFUL FOR ANY PERSON REFLECTING A STATUS OF "DENIED" TO TRANSPORT, SHIP, RECEIVE, OR POSSESS EXPLOSIVE MATERIALS.

Please carefully review this Notice to ensure that all the information is accurate. If this Notice is incorrect, please return the Notice to the Chief, National Licensing Center, with a statement showing the nature of the error(s). The Chief, National Licensing Center, shall correct the error, and return a corrected Notice.

<p>Number of RESPONSIBLE PERSON(S) : 1 Number of EMPLOYEE POSSESSOR(S): 6</p>	<p>continued</p>
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LAST NAME, First Name, Middle Name	Clearance Status	LAST NAME, First Name, Middle Name	Clearance Status
RESPONSIBLE PERSONS:		0005 POSSESSOR, EMPLOYEE	Pending
0001 PERSON, RESPONSIBLE	Cleared	0006 POSSESSOR, EMPLOYEE	Pending
EMPLOYEE POSSESSORS:			
0001 POSSESSOR, EMPLOYEE	Denied		
0002 POSSESSOR, EMPLOYEE	Cleared		
0003 POSSESSOR, EMPLOYEE	Cleared		
0004 POSSESSOR, EMPLOYEE	Cleared		

page 1 of 1

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

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APPENDIX IV: COMMENTS FROM THE ATF



U.S. Department of Justice

Bureau of Alcohol, Tobacco,
Firearms and Explosives

Office of the Director

MAR 25 2005

Washington, DC 20226

902030:GLB
5400

MEMORANDUM TO: Inspector General
Department of Justice

FROM: Director, Bureau of Alcohol, Tobacco, Firearms and Explosives

SUBJECT: The Office of the Inspector General's drafted
*Review of the Bureau of Alcohol, Tobacco, Firearms and Explosives
Implementation of the Safe Explosives Act: A-2004-006*

Thank you for the opportunity to comment on the subject review.

As the report explains you examined the implementation of the Safe Explosives Act of 2002 (SEA). The SEA enacted the most significant changes to Federal explosives laws in over 30 years, requiring all persons receiving explosives to acquire a permit from ATF. ATF had six months to implement the SEA, and we accomplished this task by realigning existing resources.

The report contains a number of recommendations that we will respond to individually below. We believe that most of the licensing-related findings and recommendations resulted from the exceedingly short two- to six-month time frames accorded to ATF to implement the statute. With subsequent appropriations, ATF has created the Federal Explosives Licensing Center that is working to resolve many of the problems you address.

Explosives are used in virtually all aspects of our society, from mining and road construction to steel production. The continued flow of explosives is critical to the American economy. We at ATF are extremely proud of the fact that we were able to qualify all companies that needed permits under the SEA to continue to receive explosives necessary for their businesses, without

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disruption. This accomplishment is in keeping with our goal of facilitating the lawful use of explosives while ensuring the safety of all Americans.

The enactment of the SEA coincided with the Homeland Security Act of 2002. This resulted in the transfer of the firearms, explosives and arson jurisdiction, as well as the alcohol and tobacco diversion jurisdiction, from the Department of Treasury to the Department of Justice. In fact, the SEA became effective, in part, on January 24, 2003, the very day of ATF's transfer. A significant amount of ATF's regulatory inspector resources, including personnel and financial assets, remained with the Department of the Treasury for the creation of the Alcohol and Tobacco Tax and Trade Bureau (TTB). Prior to the transfer, inspectors worked on alcohol, tobacco, firearms, and explosives inspections.

The TTB recruited a number of highly experienced inspectors and staff from the ATF in order to establish the TTB's work force. This resulted in the loss not only of personnel and financial assets, but also the loss of intangible assets such as knowledge, leadership, industry contacts, and training by the experienced inspectors that went to TTB. In addition, ATF temporarily assigned a number of its own experienced inspectors for several months to the TTB, to assist that agency's development.

ATF greatly appreciates the OIG's positive acknowledgements of some of ATF's accomplishments. ATF's explosives enforcement and regulatory efforts work together to prevent violence, enhance the security of explosives, and to increase public safety. For example, the OIG recognizes the unprecedented special inspection efforts ATF took in response to the terrorist attacks of September 11, 2001. With nearly all of its regulatory and some criminal enforcement resources devoted to this extremely important task, ATF was able to conduct approximately 7,500 compliance inspections in approximately 120 days.

ATF also appreciates the OIG's positive recognition of some of ATF's accomplishments in implementing the SEA. For example, the OIG on page 7 recognizes the steps ATF took to inform the industry of the SEA. The report notes:

ATF sent letters to licensees, posted frequent updates to [ATF's] website, and communicated with industry groups. For example, four days after the SEA was enacted, [ATF] issued open letters to industry members regarding the provisions of the SEA. In the course of the next month, [ATF] distributed fact sheets, press releases, and a poster informing unlicensed explosives users about the new licensing requirements.

In addition, the report notes that ATF appointed a "single point of contact and a small team" for implementing the SEA. The report recognizes that, under the leadership of this contact and

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Department of Justice

team, "...ATF worked to keep its employees and explosives members informed about the SEA, coordinated meetings and communication between ATF and outside groups, and coordinated the training of Inspectors to implement SEA provisions." The OIG also recognizes that ATF's activities "...did not disrupt [the explosives industry] operations" and that explosives licensees were generally informed about the SEA's requirements. Industry members told the OIG that they had "...few specific problems with the interim rules" developed and published by ATF. This praise by the OIG directly contradicts other portions of the report that express serious concern about the ATF's interim regulations, explosives licensing operations, SEA training, and industry dissatisfaction.

The following response contains ATF's comments to the OIG's Recommendations, Narrative Report, and Additional Issues and Appendix I. ATF appreciates the opportunity to comment on the subject review. We recognize the seriousness of our explosives responsibilities, and their importance to our missions of preventing terrorism, reducing violent crime and protecting the public. From criminal enforcement of explosives laws, to partnerships with the explosives industry, the work of ATF helps ensure the safety and security of our Nation.

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LIST OF ACRONYMS

ACHC	Automated Criminal History Check
AEPD	Arson and Explosives Programs Division
AET	Advanced Explosives Training
ANR	ATF's NICS Referral Database
APA	American Pyrotechnics Association
APA	Administrative Procedure Act
ATF	Bureau of Alcohol, Tobacco, Firearms and Explosives
DOB	Date of Birth
DOT	Department of Transportation
EIPB	Explosives Industry Programs Branch
EP	Employee Possessor(s)
EPQ	Employee Possessor Questionnaire
FBI	Federal Bureau of Investigation
FEL	Federal Explosives License (or Permit)
FELC	Federal Explosives Licensing Center
FFLC	Federal Firearms Licensing Center
FLS	Federal Licensing System
IBT	Inspector Basic Training
IFDC	International Fertilizer Development Center
IME	Institute of Makers of Explosives
IOI	Industry Operations Investigator
ISEE	International Society of Explosives Engineers
MSHA	Mine Safety and Health Administration
NCIC	National Crime Information Center
NELC	National Explosives Licensing Center

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NICS National Instant Criminal Background Check System
NLETS National Law Enforcement Telecommunication System
NLC National Licensing Center
NMA National Mining Association
NPRM Notice of Proposed Rulemaking
NTN National Tracking Number
OIG Office of the Inspector General
OJT On-the-Job Training
OLC Office of Legal Counsel
POC Point of Contact
ROD Explosives Relief of Disability Section
RP Responsible Person(s)
SEA Safe Explosives Act
SSN Social Security Number
TECS Treasury Enforcement Check System
TPD Office of Training and Professional Development
TSA Transportation Security Administration
TTB Alcohol and Tobacco Tax and Trade Bureau

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1. Implement procedures to ensure all EPs receive thorough backgrounds.	Page 8
2. Establish controls to ensure EPs do not remain in a "pending" FLS in FLS for extended periods.	Page 10
3. Implement procedures to ensure the integrity, completeness, and accuracy of the EP information in FLS.	Page 10
4. Implement quality control procedures, data entry protocols, and system modifications to ensure FLS data accuracy.	Page 12
5. Use existing ATF EP information to provide a monthly listing to each ATF Field Division of the licensees and EPs in their jurisdiction to determine the most egregious cases of licensees who have failed to notify ATF of new hires.	Page 13
6. Ensure there is no unauthorized or inappropriate use of FBI NICS E-Check.	Page 13
7. Designate a single Headquarters point-of-contact for Inspectors and explosives industry members.	Page 14
8. Examine alternatives for speeding the delivery of the ATF's Advanced Explosives Training Course, and develop a curriculum to build explosives expertise within ATF's Inspector workforce.	Page 14
9. Develop a timeline for FELC implementation.	Page 15
10. Develop comprehensive plans, funding requests, industry notices, proposed regulations, and any other documents necessary to implement the authority granted under the SEA to collect and catalog samples of explosives at the ATF National Laboratory.	Page 16

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Department of Justice

B. ATF's Comments on the Narrative of the Report

- 1. ATF information systems are ineffective for managing the explosives licensing functions mandated by the SEA.**
- 2. The ATF does not timely adjudicate appeals from individuals seeking reconsideration of prohibited person status.**
- 3. ATF does not plan to conduct background checks on all EPs until 2006.**
- 4. Inadequate training for ATF Inspectors has resulted in a lack of explosives product knowledge and inconsistent regulatory enforcement; it will take up to 7 years for all ATF Inspectors to complete the ATF's revised training course.**
- 5. ATF attempted to increase its oversight of explosives transportation in the beginning of 2003.**
- 6. If ATF had issued a notice of proposed rulemaking (NPRM), rather than an interim rule, "...explosives industry member would have been afforded the opportunity to comment on ATF's plans prior to implementation."**
- 7. Miscellaneous Comments on OIG inaccuracies.**

C. Response to Additional Issues & Appendix I

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A. ATF's Comments on the OIG's Specific Recommendations:

1. Implement procedures to ensure all EPs receive a thorough background check.

As an initial matter, it is critical to understand that in November 2002 ATF was given 2 to 6 months and had to realign personnel and resources to implement the provisions of the SEA, including conducting background checks of EPs and RPs at FELs nationwide. ATF used all available resources to timely implement the requisite SEA background checks. These checks were conducted using the existing FLS and E-check systems, programs that are simply not designed to accommodate SEA requirements.¹

Despite the obstacles, ATF has implemented appropriate procedures to ensure that EPs receive the required background checks. Current procedures, some of which have been instituted as a result of the OIG audit, include FELC entry of each EP submission into the ATF FLS and into the FBI NICS E-Check databases. FBI results -- proceed, deny, or delay -- are generally available within 24 hours. ATF receives an FBI "proceed" or "deny" response in 10 minutes approximately 92% of the time. FELC now retrieves the FBI results as they become available and enters the results into FLS. This more streamlined approach ensures that each EP timely undergoes the required background check.

In addition, ATF is in the process of establishing additional procedures to ensure that the checks are completed as expeditiously as possible. For example, FBI results of "delay" are deposited in the ATF's ANR and identified by ATF as "pending." ATF is developing new referral procedures to refer pending EPs to the respective ATF field offices for further investigation and resolution. Also, in cases where no court disposition documents may exist, the ATF Office of the Chief Counsel will assist in making a final determination of deny or proceed. These procedures ultimately will assist ATF in finalizing unresolved determinations for the delayed EPs.

OIG Conclusions Related to EP Checks

Three of the OIG conclusions related to EP checks are addressed below. As noted previously, and throughout this response, ATF is establishing new FELC procedures to ensure that thorough checks are conducted as expeditiously as possible. Among other things, ATF is increasing FELC staff to manage the voluminous EP submissions and records. In addition, FELC staff will

¹ As the OIG is aware, the FBI is allowing ATF to use the E-Check system as a temporary means of conducting background checks. The E-Check system is not set up to accommodate the SEA checks, for example, to accommodate the fact that an individual may be listed on several applications in different States, or to reconcile the final status determination of the individual with each listing.

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receive FBI NICS training in May 2005. As such, ATF is optimistic that any potential errors that may have occurred in the past will not reoccur in the future.

a) During the OIG investigation, the OIG requested an unedited listing of the first 1,000 EP records sorted alphabetically in FLS as of January 12, 2005. Based on a comparison of ATF and FBI data, the OIG found no record that the ATF requested FBI background checks on 59 of 683 EPs, or 9 percent of the OIG sample.

This discrepancy between ATF and FBI records could have occurred due to incomplete or inaccurate EP FLS data entry that subsequently was corrected. The OIG's conclusion also did not take into account whether the EP identified was associated with an active or inactive explosives record. Finally, given the limited staff and thousands of applications to process, it is possible that 59 EPs may not have had NICS checks conducted. The reason for the reported "clear" or "pending" status indicated in FLS for these 59 EPs may be due to the fact that they received NCIC/NLETS/TECS background checks. ATF will follow up on these 59 EPs to ensure that appropriate checks were in fact completed and resolved.

b) The OIG also concludes that ATF failed to complete the background checks for 655 of 1,157 EP records reviewed and identified by the FBI as possible prohibited persons, or 57 percent of OIG sample. This data would suggest that 655 potentially prohibited individuals continued to have authority to possess explosives absent a final ATF determination.

ATF understands that these possibly prohibited persons are "delayed" EPs. Per prior discussion, FBI may be unable in its 30-day time period to resolve a criminal history record as a "proceed" or "deny." FBI then will delay the EP and ATF will place the EP in "pending" status. In many cases, an EP is pending due to a criminal history record with a naked arrest and no disposition. ATF cannot lawfully render a final determination that a person is prohibited based on a naked arrest. Rather, ATF first must resolve the disposition prior to rendering a final determination of deny. ATF during its investigation may be unable to timely resolve a delay for several reasons, including inaccessible or unavailable court records. In other cases, ATF understands that the delays may be inaccurate. ATF will ensure resolution of each of the 655 delayed EPs.

c) The OIG also concludes that, when the SEA was first enacted, there were instances of ATF delays in retrieving NICS results and updating FLS.

ATF recognizes that, at the start of the SEA implementation, there were instances of such delays. This can be attributed to lack of familiarity with the new procedures and systems. The procedures that ATF now has in place should alleviate this problem in the future.

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d) Finally, the OIG Report on page 29 finds that NICS denied four EPs who were convicted felons, and that ATF delayed them.

ATF has since denied each EP and issued appropriate denial letters.

2. Establish milestones and controls to ensure that EP applicants do not remain in a “pending” status in FLS for extended periods.

We concur. ATF is finalizing referral procedures that will address the issue of EPs remaining pending in FLS for extended periods of time. Specifically, ATF is developing procedures to determine when and how a referral will be generated and forwarded to the respective ATF Field Office for resolution. In addition, ATF plans to develop a system-generated monthly report, for all active applicant and renewal FELs, of each RP/EP who remains pending beyond 60 days. FELC will ensure that a final determination is completed for these pending RPs/EPs.

3. Implement procedures to ensure the integrity, completeness, and accuracy of the EP information in FLS. To correct the current data problems, ATF should conduct a 100 percent cross-match of the names of individuals issued licenses and permits by ATF with the names of individuals on whom the FBI conducted NICS checks, and then:

- a. **Conduct background checks on any individuals contained in [ATF’s] licensing system but not confirmed as having been checked by the FBI.**
- b. **Immediately recheck the license status of all individuals determined by the FBI to be prohibited persons and ensure those individuals are denied access to explosives.**
- c. **For any individual that the FBI has recorded a NICS background check under the ATF’s NICS user identification number, but for whom [ATF] has no record in its licensing system, determine whether the person is involved in the explosives industry. If the person is, enter the individual into the ATF’s licensing system, and, if not, conduct an investigation to determine who may have performed the background check and why.**

We concur that it is critical that ATF maintain efficient procedures to ensure the integrity, completeness, and accuracy of the EP information in FLS. ATF is constantly reevaluating the FLS system to examine new methods to improve the FLS data within the confines of the FLS software. In some cases, ATF has instituted innovative new methods to ensure data accuracy. For example, in response to this OIG investigation, ATF has implemented internal control procedures to periodically compare the data in FLS with the data in the ANR database (where FBI “delay”/ATF “pending” results are stored). In this manner, ATF can ensure that in certain cases the ANR and FLS are reconciled.

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However, we disagree with the report's underlying assumption that the ATF FLS and FBI NICS systems must be mirror images of one another. FBI is not the agency of jurisdiction charged with issuing the final determination on an EP or RP. Rather, the system is designed to operate as follows:

- The FBI NICS section allocates 30 days to perform background checks on EPs/RPs listed on FELs.
- FBI provides ATF with results of deny, proceed, or delay.
- ATF makes a final determination that may or may not mirror the FBI determination. For example, ATF may determine that an EP was granted relief from explosives disabilities or that an arrest did not result in an explosives disability.²
- The FLS is updated with the ATF determination.

After the initial 30 days, the FBI is not responsible for conducting any further review. At that time, it is solely ATF's responsibility to render a final determination on the status of an individual. ATF may conduct days or weeks worth of research to reach a final determination on a particular individual. For example, the disposition for an otherwise ambiguous criminal history record may require that a field agent travel to distant courthouses to obtain certified copies of dispositions.

Because ATF, in certain cases, will conduct additional research of an FBI result, there will always be instances in which ATF's and FBI's individual records will differ. The differences do not necessarily represent a material weakness in the system or procedures. Rather, certain ATF records will always be more comprehensive than FBI files because FBI is not required to work a file beyond the 30-day window.

Even if it were, for some reason, critical to reconcile ATF and FBI databases, because of competing priorities ATF could not conduct a 100 percent cross-match of the names of individuals issued licenses and permits by ATF with the names of individuals on whom the FBI conducted NICS checks. However, it would be extremely helpful for ATF to be able to access the FBI audit log and any FBI research accomplished in the FBI's 30-day window. Authorization for ATF access would, among other things, avoid duplicative efforts, more efficiently resolve delays, and allow ATF access to information concerning the FBI's specific basis for a denial or proceed. Unfortunately, at this time FBI regulations preclude ATF access to the FBI audit log. ATF believes that new authority for FBI to create a separate, freestanding FBI audit log to which ATF could access FBI casework would greatly improve the efficiency and accuracy of processing background checks.

² There may also be misspellings, incomplete names (e.g., John Smith and John Doe Smith), or reverse names (e.g., Kelly John or John Kelly) in one or more records that account for differences in FLS and NICS but this will not affect the final determination of whether an EP or RP is prohibited.

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- 4. Implement quality control procedures, data entry protocols, and system modifications to ensure FLS data accuracy, including:**
 - a. Modification of FLS to ensure that an Employee Possessor has only one status, system-wide, no matter how many licenses or permits associated with the individual.**
 - b. Modification of FLS to prevent the entry of illogical or incomplete data.**
 - c. Modification of FLS to preclude the entry of Employee Possessor information into FLS without a NICS background check having been completed.**

To the extent that existing information systems and resources allow, ATF concurs that it will implement quality control procedures and data entry protocols in FLS to: (a) ensure an individual EP's current status is reflected in all FLS records; and, (b) prevent the entry of inaccurate data.

ATF emphasizes that FLS is not designed to accommodate these OIG requests with 100 percent success. While ATF can run periodic name checks -- to ensure that a person has the same status each time he or she is entered on multiple licenses -- these periodic checks will not remedy inconsistent status determinations where a name has been entered multiple times and misspelled, entered differently (e.g. no middle initial vs. middle initial vs. full middle name), reversed name (e.g., John Alexander vs. Alexander John), etc. ATF can run "wild card" checks with SSNs when available to ensure greater accuracy of name checks, although ATF cannot lawfully require EP SSNs.

Additionally, ATF and FBI are developing new procedures that will implement the OIG's recommendations (a) and (b), above. For example, FBI NICS assigns all E-Check submissions an NTN. After March 2005, FELC personnel will now enter the NTN in the comments field in the FLS EP record in order to have the ability to directly correlate the NTN with the individual and FEL. Further, the FBI recently has implemented procedures such that, when ATF enters and later corrects incorrect data into E-Check, the FBI NICS section will issue a new NTN number and generate a new check based on the new data. FBI will then "cancel" the original NTN to eliminate duplicate entries in its system.

The agencies' new procedures will assist in ensuring that the OIG recommendations in 4(a) and (b) are fulfilled to the extent practicable.

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Finally, ATF does not concur with the OIG's third recommendation to preclude entry of EPs into FLS absent an FBI check. ATF needs to enter the EPs into FLS first, before the FBI check, in order to correlate the EP with the particular FEL whose license application or renewal is pending.

5. Use existing ATF EP information to provide a monthly listing to each ATF Field Division of the licensees in their jurisdiction, the number of EPs, and the date the company last reported an EP to determine the most egregious cases of licensees who have failed to notify [ATF] of new hires.

ATF does not concur with this recommendation. ATF field offices inspect FELs at least once every 3 years. It is not necessary nor is it legally required to conduct monthly inspections of all FEL employee possessor information. Devoting limited resources to such a program is unlikely to yield significant information of law enforcement interest and would divert inspectors from conducting routine but critical firearms and explosives inspections.

6. Take action to ensure that there is no unauthorized or inappropriate use of the FBI NICS E-Check system. As an immediate action, [ATF] should cancel the NLC's NICS user identification number and assign unique user identification numbers to each individual responsible for conducting the checks.

ATF is committed to using the FBI NICS E-Check system in a manner that is consistent with the FBI regulations. Any unauthorized or inappropriate use of this system will result in appropriate disciplinary action. However, ATF does not concur with the OIG's recommendation to assign unique numbers to each FELC employee. Because the NICS E-Check system is designed to capture the name of each ATF individual conducting a background check at the time data is entered and at the time of retrieval, the need for a unique identification number for each individual responsible for conducting the checks is unnecessary and duplicative.

In this regard, the OIG reports that a sample review of 893 EPs disclosed 21 EPs who did not appear in FLS, or 2% of the OIG sample. The OIG data would suggest that ATF is conducting unauthorized background checks. ATF believes that these 21 EPs may be entered in FLS, however, the names may have initially been entered inaccurately and subsequently corrected in the ATF record (e.g., John Smith/ John T. Smith). ATF acknowledges that there may be isolated instances where EPs listed on FEL applications receive E-checks but ATF did not enter the EP in FLS. As mentioned previously, ATF is taking corrective actions such as quality control procedures and data protocols to remedy these past problems.

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7. Improve the consistency of regulatory determinations by designating a single individual at ATF Headquarters as a point-of-contact for Inspectors and explosives industry members. The point-of-contact should maintain a history of regulatory inquiries and post frequently requested information on the ATF's website.

Currently, EIPB serves as a single point of contact. The EIPB will continue in that role. Among other things, the EIPB:

- Constantly evaluates how information is processed and communicated to ATF field personnel and the explosives industry to ensure effectiveness and historical accuracy;
- Publishes, on a biannual basis, a newsletter to all explosives industry members that discusses regulatory issues and procedures;
- Maintains and files an extensive history of regulatory inquiries, with some dating back to the 1970's;
- Attends numerous industry events, seminars, and conferences annually, meeting with industry officials and organizations from such groups as the IME, NMA, ISEE, and APA to discuss pertinent issues;
- Instructs Inspectors during Advanced Explosives Training; and,
- Is responsible for responding to hundreds of letters, facsimiles, phone calls, and other inquiries from industry and from ATF personnel on issues relating to the administration and enforcement of the Federal explosives laws and regulations.

The EIPB Chief is responsible for overseeing these functions and is already complying with this recommendation.

8. Examine alternatives for speeding the delivery of the ATF's Advanced Explosives Training Course to all Inspectors, and develop a curriculum to build explosives expertise within ATF's Inspector workforce.

The Office of Training and Professional Development (TPD) utilized a "train the trainer" approach to expedite training to reach all Field Divisions and Field Offices as quickly as possible on SEA implementation.

The Advanced Explosives Training (AET) course was revised in 2003 to include new regulations under the SEA. Since its revision, approximately 136 inspectors have attended the 8-day training. Due to the extensive and time-consuming nature of the course, it would not be practical to "speed the delivery" of this comprehensive training, however, ATF will be increasing course availability. AET will be offered three times in FY05, and the Explosives Training Branch plans to deliver four courses in FY06. We note that this course is not designed

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for the new inspector. Therefore, it is unlikely that the entire inspector workforce will have attended this training at any given time. AET is specifically targeted for journeymen level inspectors, on-the-job training officers, and inspectors who have completed Inspector Basic Training and on-the-job training. These personnel are independently conducting explosives inspections, and they can take the knowledge and skills developed during the course back to the office and pass it down to the new inspector workforce through on-the-job training and mentoring.

Inspector Basic Training is held for all inspectors at the Federal Law Enforcement Training Center in Glynco, Georgia. This training consists of a dedicated block on explosives laws and regulations, product identification, practical exercises on magazine construction and table of distances, and how to conduct a records examination.

TPD has designed and developed the advanced explosives training curriculum to build upon the expertise of the Inspector workforce obtained through previous training classes and on-the-job-training. These programs are already in place and include Advanced Explosives Training for Inspectors, Chemistry of Pyrotechnics, and the MSHA Mining, Blasting, Safety and Application Seminars. In addition to the above training courses, TPD will be providing each Field Division with a variety of explosives training materials and training aids to be utilized during mandatory roll-call training at the Field Office level to include Table of Distance review and exercises, Explosives Multimedia Database of product identification, classification and storage of explosives materials, safety, as well as training materials concerning the commercial explosives and fireworks industries. Accordingly, ATF is already implementing this recommendation.

9. Develop a detailed timeline for accomplishing the actions necessary to complete the implementation of the National Explosive Licensing Center in Martinsburg, West Virginia, including the implementation of changes to the licensing and background check processes, the adjudication process for Employee Possessors, and the data systems that will support these processes.

A detailed timeline has been prepared for the completion of the FELC in West Virginia. The FELC is now processing new and renewal explosives applications for 38 States. The FELC also processes all explosives appeals for new and renewal explosives RPs and EPs. (An appeal is filed when an RP or EP believes that the disqualifying criminal history record is in error or in fact belongs to another individual.) By May 2005, the FELC will also process all corporate accounts for large explosives licensees.

In addition, FELC works with the EIPB on updates to the FLS system regarding decisions on variance requests and relief of disabilities. By the end of fiscal year 2005, it is expected that all

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duties relative to explosive licensing will be transitioned to the FELC Martinsburg, West Virginia, from the NLC. The completion of this transition is dependent on the speed of the hiring process for the current FELC vacancies. Accordingly, ATF is already implementing this recommendation.³

10. Develop comprehensive plans, funding requests, industry notices, proposed regulations, and any other documents necessary to implement the authority granted under the SEA to collect and catalog samples of explosives at the ATF National Laboratory.

ATF's effort to collect and catalog explosives samples pursuant to the SEA requires personnel, appropriate databases, and suitable storage facilities for collected samples. The ATF National Laboratory and Information Services Division, the two ATF components responsible for carrying out this SEA provision, did not receive any new positions to support this SEA implementation. Nonetheless, ATF is using current staff to move the implementation forward. The plan for implementing these efforts is described in the Laboratory Services FY05 Operating Plan and highlighted in the Office of Science and Technology Priorities through FY07. These efforts include the following 2005 action items:

- Complete development of the ATF Explosive Materials Database;
- Propose contracts for the development of the Database of U.S. Commercial Explosives;
- Begin acquiring and constructing explosives magazines for the transport and storage of collected explosives samples;
- Formalize explosive sample collection protocols to ensure that relevant data is consistently and accurately collected from manufacturers; and,
- Advise the industry of collection protocols as necessary and when appropriate.

Accordingly, ATF disagrees with the OIG statement that ATF is making little progress with respect to these efforts. In fact, ATF is already implementing the OIG recommendations.

B. ATF's Comments on the Narrative of the Report:

1. ATF information systems are ineffective for managing the explosives licensing functions mandated by the SEA.

ATF invested approximately \$1.5 million on modifications to FLS, and the other ATF systems that are integrated with FLS, to accommodate the provisions of the SEA to the extent feasible.

³ Regarding data systems to support these processes, see Recommendations 1-5.

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FLS is the core application for FELC. Both firearms and explosives licenses and permits are issued from FLS. FLS was modified to accommodate a number of processes, to include:

- The generation of the Type 60 Limited Explosives Permit. Intrastate users of explosives must first obtain an ATF "limited permit" prior to receiving explosive materials. The limited permit allows the purchaser to receive explosive materials from an in-State explosives licensee or permittee on no more than six occasions during the period of the permit. The limited permit is valid for one year and is renewable.
- The recording of the receipt of fingerprint cards and photographs for all RPs submitted to ATF.
- The recording of the status of the criminal background checks from ACHC as well as NICS. The status is entered in as either pending, denied, or cleared. FLS was modified so that a license/permit cannot be issued if any of the responsible persons do not have a background status of cleared.
- ATF notifies employers in writing or electronically with a general Notice of Clearance as well as the result of each individual background check. ATF provides EPs and RPs with letters of clearance, denial, and delay as appropriate.
- The interface to ACHC was modified to incorporate a fingerprint card number from FLS. This change will allow for an electronic interface between the RPs and the electronic submission of the fingerprint cards by ATF.

2. The ATF does not timely adjudicate appeals from individuals seeking reconsideration of prohibited person status.

The OIG states that the ATF does not timely adjudicate appeals from individuals seeking reconsideration of prohibited person status. It cites in support of this claim the ATF Draft Order 3320.5 and an internal Explosives Relief of Disabilities Section's document, titled "Office Procedures." The OIG did not provide any recommendations on how to correct what it believes to be a lengthy process.⁴

⁴ Terminology used in the title statement to this section is inaccurate and could result in confusion over procedures EPs and RPs may pursue with ATF. "Appeals" are submitted to ATF's FELC by an EP or RP who disputes an ATF finding of prohibited, and believes that the criminal or alien records used by ATF are inaccurate or based upon the criminal history of a different person with a similar name. "Relief of Disability" applications are submitted to ATF's ROD by persons that admit to being prohibited, but wish to apply for relief of disabilities pursuant to 18 U.S.C. 845(b). It is our understanding that OIG's report addressed the Relief of Disability application, adjudication and determination process as opposed to the appeal process. As such, ATF's response focuses on Relief as well.

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As an initial matter, ATF will always conduct as thorough an investigation and adjudication, in as expeditious a manner as possible, with the focus of all investigations on public safety rather than rates of clearance or denial. Each relief application filed triggers an exhaustive field investigation, extensive Headquarters adjudication, and a thorough final determination. The Office of the Chief Counsel must also approve all denials and other complex relief determinations. Additionally, although internal ATF guidelines accord Special Agents 60 days to complete the field investigation, the OIG fails to recognize that these guidelines also provide that Special Agents may request an extension of time beyond the 60 days where necessary.

In fact, Special Agents often require additional time to interview references, to research court files, to travel on behalf of the investigation, to obtain additional information from the applicant, to accord the applicant additional time to gather information, and to prepare a response for Headquarters review. Finally, the applications for relief are not evenly dispersed between ATF's field divisions. This causes some field divisions and agents to be overburdened with applications, while others receive far fewer assignments.

There is no disagreement that the average investigation time to finally adjudicate these applications could take up to 120 days.⁵ ATF also agrees that 13 applications took more than 6 months to grant the relief. ATF believes that this is not an unreasonable amount of time to thoroughly investigate a prohibited person's background, as described above, before taking the extraordinary measure of granting someone relief from explosives disabilities.

Further, ATF believes a more balanced appraisal of the length of time would compare the average length of time for "granted" relief applications versus "denied" applications. Internal analysis shows that denials take longer, which increases the average time for all applications combined. The denials take longer in part because there are additional review procedures required to ensure the applicant's due process. In any event, ATF appreciates this information and will update the "Office Procedures" to include a more appropriate length of time to adjudicate applications.

Ultimately, the OIG's statement may mislead readers into thinking that the industry and relief applicants are experiencing undue delays in relief determinations. In fact, ATF is exercising due diligence in ensuring that those persons who are denied relief receive the requisite due process. ATF is also exercising due diligence in ensuring that only those persons who do not present a threat to public safety are granted relief. Given this serious responsibility, ATF will not compromise our investigations in this regard.

⁵ ATF's statistics show that the average number of days to "grant" relief was 106 days (below the average). It took an average of 181 days for ATF to determine that there was "no disability" (i.e., the applicant's disability was not disqualifying under 18 USC 842(i)). Finally, it took an average of 196 days to "deny" relief to applicants. At the time of the OIG's review, ATF had adjudicated 299 of 453 cases (66%).

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As a final matter, ATF notes that in many if not most cases relief applicants are convicted felons, they were convicted pre-SEA, and they should have requested relief at the time of the conviction.⁶ In some instances, these applicants have been possessing explosives unlawfully for extended periods of time. The only reason they are applying for relief at this time is that ATF now has authority to conduct background checks. ATF anticipates that the numbers of post-SEA filings of relief applications by convicted felons may diminish as the backlog of these individuals is reduced.

3. ATF does not plan to conduct background checks on all EPs until 2006.

The report on page 13 states as follows: “[ATF] does not plan to conduct background checks on all EPs until 2006”. This statement implies that ATF is choosing – as a policy matter – not to conduct complete checks on all EPs. In fact, as noted later in the document, the Federal explosives law does not authorize such checks until renewal of a license. The better way to state this concept is as follows: “The law does not require background checks on all EPs until all existing businesses qualify under the SEA in 2006.”

4. Inadequate training for ATF Inspectors has resulted in a lack of explosives product knowledge and inconsistent regulatory enforcement; and, it will take up to seven years for all ATF Inspectors to complete the ATF’s revised training course. (Page 47, Paragraph 2)

The OIG’s report focuses on several areas of perceived inadequate training and lack of expertise. ATF believes it has improved its training courses, expanded its focus on on-the-job training, and successfully strengthened its expertise throughout ATF.

a) Training Courses: See ATF’s response to Recommendation 8, where we have addressed a number of the concerns regarding delivery of the Advanced Explosives Training, as well as availability of Chemistry of Pyrotechnics course, and the MSHA Mining, Blasting, Safety and Application Seminars. Additionally, it should be noted that all inspectors receive an extensive block of training on explosives and inspections during the Inspector Basic Training course at the Federal Law Enforcement Training Facility in Glynco, Georgia.

⁶ ATF would like to clarify certain OIG statements with respect to relief. For example, persons with pending ROD applications are admitted prohibited persons who cannot possess explosives by virtue of their self-admitted status. Also in the context of relief applications, it is generally inaccurate to state that ATF has "overturned" prohibited person determinations. Rather, pursuant to statutory authority, ATF grants relief to such persons.

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b) On-the-job Training: The OIG report fails to acknowledge the success of ATF's inspector on-the-job training (OJT) program. During the program, an experienced or journeymen inspector works closely with a new inspector, providing guidance and evaluation on all facets of the inspector's work. ATF continues to work toward ensuring there are enough experienced inspectors in all field divisions to train the new inspectors that come aboard. Currently, there are approximately 420 Grade 12/13 IOIs and 160 Grade 5 through 11 IOIs.

In addition to the formal on-the-job training, each explosives inspection enhances inspectors' knowledge. New products are being developed all the time, and ATF's field experience and partnership with the industry provide excellent opportunities for exposure to new and infrequently used explosives. Therefore, ATF encourages its inspectors to learn as much as possible about the industry and the products they encounter in the field.

c) Expertise: The report states that some inspectors who have attended AET feel that they are not comfortable addressing all issues they encounter in their field inspections. ATF inspectors are responsible for conducting inspections at a variety of types of explosives premises, including: commercial explosives and fireworks manufacturers and importers, retail businesses, mines, quarries, demolition companies, specialty products, rocket propellant manufacturing operations, construction companies, and shot services. In addition, most ATF inspectors spend the majority of their field time on firearms issues. Due to the broad range of field activities, it is understandable that some inspectors are more comfortable addressing certain issues and less comfortable with other issues. With this in mind, ATF's EIPB is a field resource staffed with personnel whose primary objective is the consistent and efficient administration and enforcement of the Federal explosives laws and regulations. These former inspectors work with ATF inspectors and agents, industry members, the general public, and other agencies on a wide variety of explosives issues. One of their primary purposes is to serve as a resource to ATF inspectors in the field.

According to the report, an ATF official confirmed that ATF is aware that inspectors from different field divisions are sometimes inconsistent in their advice to industry. Unfortunately, industry members have sometimes received inconsistent advice on similar issues. However, the number of these instances in which incorrect information has been received may be overstated. It is sometimes necessary to take into account several circumstances surrounding an issue in order to make an appropriate determination as to the correct course of action. In some cases, two situations that may appear to be alike may have significant differences that affect an ATF determination. If an industry member has a disagreement with an inspector or their recommended corrective action, they should contact the local area supervisor to discuss the situation.

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We recognize inspecting the explosives industry is highly complex and difficult. For that reason, we are continually trying to develop more advanced training programs for inspectors and trying to make this training readily available to the appropriate workforce.

5. ATF attempted to increase its oversight of explosives transportation in the beginning of 2003.

The report at pages 9 through 11 address issues that arose during SEA implementation regarding the jurisdictional authorities of ATF and DOT.

Since its enactment in 1970, the Federal explosives law has prohibited “any person” who falls into a prohibited person category (e.g., convicted felon, fugitive, drug user) from shipping or transporting explosives in interstate or foreign commerce, or from receiving or possessing any explosives that have been shipped or transported in interstate or foreign commerce. 18 U.S.C. 842(i). For instance, since 1970, a truck driver who was a convicted felon was prohibited from transporting explosives interstate. The SEA did nothing to change that prohibition. In fact, the SEA added three categories of prohibited persons to the general proscription on shipping, transporting, receiving and possessing explosives interstate.

There is an exception to this general proscription providing that (in part and with certain exceptions) any aspect of the transportation of explosives which is regulated by the Department of Transportation (DOT) or agencies thereof, and which pertains to safety, is not subject to section 842(i) and certain other prohibitions. 18 USC 845(a)(1). At the time the SEA was enacted, DOT had not issued regulations that addressed the safety and security aspects of prohibited persons engaged in the transportation of explosives. In other words, there were no DOT regulations establishing DOT security threat assessment standards for determining whether or not a felon or other prohibited person under the Federal explosives law posed a security threat in transporting explosives. The USA PATRIOT Act, enacted on October 25, 2001, expressly authorized DOT to issue such regulations. However, DOT had not yet done so and in fact did not issue such regulations until early and mid-2003.

In an opinion by the Department of Justice Office of Legal Counsel (OLC), that office stated that the express lack of DOT regulations, specifically addressing the threat posed by convicted felons and others transporting explosives, authorized ATF’s long-standing application of the prohibited persons categories to explosives transportation workers under Federal explosives law. Thus, ATF has enforced section 842(i) prohibited person categories against all persons transporting explosives since 1970.

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a) OIG Statement. The report on page 9 incorrectly suggests that the OLC opinion limited ATF jurisdiction to enforce section 842(i) to the SEA's three new prohibited person categories (i.e., aliens, dishonorable dischargees, renunciants). For example, the report states: "...the OLC determined that since the DOT did not have a mechanism to enforce the three prohibited categories created by the SEA... it was within the ATF's authority to enforce these prohibitions..." In fact, ATF since 1970 had authority to enforce all section 842(i) prohibited person categories against all persons transporting explosives. It was not until 2003 that DOT first promulgated regulations establishing DOT's security threat assessment standards in this regard. As a result, at that time, DOT preempted application of each section 842(i) prohibition against explosives transportation workers regulated by DOT.

ATF Recommendation. On page 9, delete the following sentence: "However, the OLC determined that since the DOT did not have a mechanism to enforce the three prohibiting categories created by the SEA... it was within ATF's authority to enforce these prohibitions..." Replace with the following sentence:

"However, the OLC determined that DOT had not issued regulations establishing DOT security threat assessment standards for determining whether or not a felon, alien, or other prohibited person under the Federal explosives law posed a security threat in transporting explosives. Therefore, it was within ATF's authority at that time to enforce these prohibitions."

b) OIG Statement. Additionally, the report on page 10 incorrectly suggests that ATF "regulated" explosives transportation: "The confusion arose because, although the ATF previously had authorization to regulate explosives transportation... it did not have a mechanism to enforce this authority until May 2003." This is not an accurate statement for several reasons. First, ATF did not and does not currently "regulate" explosives transportation. Additionally, even after the SEA, ATF did not have authority to conduct background checks on explosives transportation workers regulated by DOT (e.g., non-employees of licensees or permittees who were transporting explosives under DOT authority).

ATF Recommendation: On page 10, delete the sentence beginning with "The confusion arose..." and replace with the following: "The confusion arose at the time of the introduction of a lawful ATF form for completion by explosives transportation workers in early 2003."

c) OIG Statement. On page 11, the report states that ATF "acknowledged" it had required a burdensome and unnecessary Federal form. The report suggests that ATF improperly imposed

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an unnecessary burden on industry. In fact, ATF stated that the form was unnecessary only as a result of recent TSA regulations.

ATF Recommendation: In the sentence beginning with "In September 2003...", revise as follows: "In September 2003, **in light of the new TSA regulations establishing DOT security threat assessment standards**, the ATF **stated** that the [form] requirement was 'unduly burdensome and unnecessary' and discontinued the form."

6. If ATF had issued a notice of proposed rulemaking (NPRM), rather than an interim rule, "...explosives industry member would have been afforded the opportunity to comment on ATF's plans prior to implementation."

ATF has two concerns with the OIG's findings in this regard on page 8. First, there are inaccuracies regarding certain statements made by the OIG:

- The statements that ATF issued interim regulations "shortly before the provisions of the SEA took effect," and also that the interim rule was issued "two months prior to the SEA's effective date," are incorrect. The interim rule was issued on March 20, 2003. The effective date for certain provisions of the new law was **January 24, 2003** (e.g., new categories of prohibited persons). Other provisions of the SEA became effective May 24, 2003.
- In Footnote 22, the draft report states that ATF "was unable to issue proposed rules prior to issuing interim regulations." This is incorrect. Proposed rules precede final rules, not interim rules.

Based on the discussion on page 8, along with the information provided in Footnote 22, it is apparent that the OIG believes that ATF should have issued a notice of proposed rulemaking rather than an interim rule.

Section 553(b) of the Administrative Procedure Act (APA), 5 U.S.C. 553(b), generally requires that agencies publish in the Federal Register a notice of proposed rulemaking. This section also provides that advance notice of, and public comment on, agency rules may be dispensed with "when the agency for good cause finds (**and incorporates the finding and a brief statement of reasons therefore in the rules issued**) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest." [Emphasis added].

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For every statutory amendment of the Federal firearms or explosives laws preceding the SEA, ATF has issued temporary or interim regulations without first publishing a notice of proposed rulemaking. The "good cause" exception to the APA authorizes this method of rulemaking. It is standard procedure for quickly providing information to a regulated industry.

In the interim rule, ATF clearly articulated its reasons for dispensing with the usual notice-and-comment procedure (see section titled "Administrative Procedure Act (APA)," page 13778). Among other things, it stated that issuance of a notice of proposed rulemaking followed by a comment period, consideration of the comments, and publication of a final rule would delay implementation of the important security and safety provisions of the SEA.

The effective date for certain provisions of the Safe Explosives Act was January 24, 2003, only 60 days after enactment, with the remaining provisions effective on May 24, 2003. As stated in the interim rule, the explosives industry needed immediate guidance to comply with the statute. For example, industry members needed to determine whether any of their employees were prohibited from possessing explosives under the new prohibited person categories. In addition, the explosives industry, responsible persons, employees who possess explosives in the course of their employment, and members of the general public needed immediate guidance on the procedures for applying for relief from explosives disabilities under the new law. It was also necessary to provide immediate guidance concerning the limited permit provisions of the law to give persons who may have needed such a permit time to learn the new requirements of the law, determine whether they should obtain a limited permit or a user permit, and file an application to avoid conduct which would be unlawful after the applicable effective date.

As indicated above, the rulemaking process is a lengthy one. The average length of time of a rulemaking proceeding, from the drafting of a proposed rule to the issuance of a final rule, is over one year. This would have been unacceptable for the proper implementation of the SEA. While it is technically true that ATF was unable to issue a proposed rule "due to time constraints," ATF finds this statement to be misleading. It implies that a proposed rule was not issued because of ATF's inability to act in a timely manner, rather than the lengthy time involved in the usual notice-and-comment rulemaking process.

Finally, ATF does not plan to issue final SEA rules in mid-2005, as indicated in the document. ATF recommends deletion of the entire paragraph and accompanying footnotes, beginning with "The ATF issued formal regulations...". ATF recommends inserting in its place the following: "ATF issued an interim final rule implementing the SEA in March 2003. ATF expects to issue final rules in or about October 2006."

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7. Miscellaneous Comments on OIG inaccuracies.

- a. Persons under felony indictment subject to Federal explosives law. The OIG report fails to recognize that, pre-SEA, persons subject to 18 U.S.C. 842(i) included persons under felony indictment. We recommend the OIG include this prohibition where appropriate. See OIG Report, pages i, 4.
- b. Responsible persons/Employee possessors. The report misunderstands the SEA's submission requirements for responsible persons, and the scope of the employee possessor provision. The explanation on page (ii) should read as follows:

In addition, the SEA required that **certain** proprietors... submit fingerprint cards, photographs **and identifying information to ATF...** Finally, the SEA required ATF to conduct background checks on all employees of licensees and permit holders who **are authorized to** possess explosives.
- c. Part 555. The report mistakenly references Part 55; the proper cite is Part 555. See OIG Report page 2, footnote 13.
- d. Chart. The OIG appears to have mistakenly left a previous edition of this chart in the report. See OIG Report page 22.
- e. Enactment dates of the SEA and its provisions. The OIG report incorrectly states that the enactment of the SEA was on November 24, 2002. The correct date is November 25, 2002. The report also has incorrect dates for implementation of the SEA provisions, January 25 and May 23, 2003. The correct dates should be January 24 and May 24, 2003. These were the dates provided to the industry in two open letters and ATF I 5400.4. See OIG Report pages i, 4.
- f. Final SEA regulations. The OIG states the final SEA regulations should be issued in 2005. A more realistic date is not before 2006.

C. Response to Additional Issues & Appendix I, pages 56-62

The OIG developed a section in its report, titled *Additional Issues*, in which it discusses several key issues that are not addressed by the SEA, but are nonetheless relevant to public safety and the safeguarding of explosive materials. See e.g, pp.xi-xii, 56-59. While ATF appreciates the OIG's attempts to bring these important issues to the attention of the report reviewers, we believe that this section should be removed. The issues discussed in this section have, at best, a

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tangential relationship to the scope of ATF's implementation of the SEA and appear to cast responsibility on ATF for matters not under its control.

If the OIG disagrees with this, ATF respectfully, but forcefully, requests that certain information be deleted as discussed at the January 11 meeting. Any information ATF has sent forward allowing for policy decisions on the part of the Administration is not subject to public disclosure.

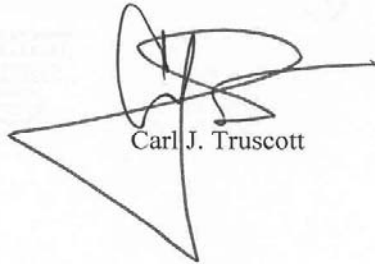
In regards to "Appendix I: Domestic and Foreign Bombing Incidents," ATF is unclear on how this section also relates to implementing SEA. However, if the OIG wishes to maintain this appendix, then ATF would appreciate that the report accurately state that this analysis and the charts contained within were developed by the OIG, and not the ATF National Repository. Analytical errors were pointed out during the January 11 meeting. ATF recommends that this section be removed due to the fact that it is irrelevant to implementing SEA, however if the OIG wishes to provide such an analysis in this report, then we ask that the analysis be corrected as discussed or the OIG should ask the ATF Repository to conduct such an analysis and write the narrative summarizing the results of the analysis.

CONCLUSION

We sincerely thank you for the opportunity to review the OIG's drafted report. ATF recognizes that there are important discrepancies resulting from this review that need to be immediately and appropriately addressed. However, this report did not provide enough recognition towards the accomplishments of this agency for its implementation of the SEA. In a very short period of time, ATF was able to develop and publish regulations and forms, provide educational material to the industry, conduct industry educational seminars, reconstruct a database system with new functions, conduct thousands of employee background checks, and facilitate thousands of businesses to continue or begin business throughout the process. ATF is very proud of these accomplishments. Disclosing which processes or programs the OIG believes were successful would also be beneficial in giving ATF guidance for future initiatives.

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Additionally, we strongly disagree with many of the findings and statements contained within this report. While we acknowledge that better procedures should be instituted and systems updated, we emphatically dispute the paragraph on pages 20 and 41, boldly displaying the OIG's results of the review. We are confident that this will change with the clarification ATF presents in this document and corrected figures.



Carl J. Truscott

APPENDIX V: OIG ANALYSIS OF THE ATF'S COMMENTS

On March 11, 2005, the Office of the Inspector General (OIG) sent copies of a draft of this report to the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) with a request for written comments. We requested that the ATF indicate its concurrence or nonconcurrence with each recommendation, describe actions taken or planned in response to the recommendations, and provide the completion dates of the actions. The ATF responded to us in a memorandum dated March 25, 2005.

The ATF concurred with six of our ten recommendations, did not concur with three recommendations, and partially concurred with one recommendation. Several of the ATF's responses to our recommendations failed to provide the ATF's planned actions for correcting the serious deficiencies documented in the report.

Prior to responding to the report's recommendations, the ATF commented that it successfully implemented the Safe Explosives Act (SEA), which it called the most significant change to Federal explosives laws in over 30 years, within the required 6 months by realigning existing resources. While acknowledging the OIG's positive statements in the report regarding the ATF's efforts to inform explosives industry members of SEA regulations and conduct initial compliance inspections, the ATF stated that these statements contradicted other portions of the report that expressed serious concern about ATF's implementation of the SEA.

The ATF's claim that it was successful at implementing the SEA because it qualified all companies that needed permits under the SEA to continue receiving explosives necessary for their businesses without disruption is not fully accurate. While we found that the ATF issued licenses to *new* applicants timely, many applicants seeking renewal of their explosives licenses received Letters of Continuing Authority instead. These Letters allowed the companies to continue operations until the ATF could carry out renewal inspections required by the SEA. According to the ATF, in the 17 months prior to May 24, 2003, the ATF issued 254 Letters. In the 17 months after the Employee Possessor provisions of the SEA took effect, the ATF issued 1,301 Letters, a 512 percent increase. As a consequence, the background checks on the Employee Possessors of these companies were not conducted timely but were delayed until the companies were inspected. In addition, as our report also documents, the ATF has experienced significant difficulties in ensuring that Employee Possessors associated with both new and existing licensees

have background checks, and that Employee Possessors determined to be prohibited persons do not have access to explosives.

We disagree with the ATF's statement that our positive comments regarding actions the ATF took to implement the SEA "directly contradicts" other portions of the report that describe serious problems we found in the ATF's operations. Each OIG report seeks to provide a balanced examination of the issues reviewed. Accordingly, we note positive actions taken by an organization whenever appropriate. However, it is not contradictory for us also to note shortcomings in those same operations. Further, as the ATF stated on page 2 of its response, its mission includes both "facilitating the lawful use of explosives while ensuring the safety of all Americans." Actions that contribute to fulfilling the first part of that mission (i.e., issuing explosives licenses without causing disruptions to businesses) can be viewed as successful while at the same time ATF's actions to prevent prohibited persons from having access to explosives) can fall short.

Our analysis of the ATF's response to the report's recommendations follows.

THE ATF'S RESPONSE TO THE OIG'S RECOMMENDATIONS

Recommendation 1: Implement procedures to ensure that all Employee Possessor applicants receive a thorough background check.

Status: Resolved – Open

Summary of the ATF's Response: The ATF did not specifically state that it concurred with this recommendation, although it indicated concurrence by identifying the steps it is taking to implement the recommendation. In its response, the ATF provided additional comments regarding the background check process.

The ATF reiterated that it was given two to six months to implement the provisions of the SEA, including conducting background checks of Employee Possessors and Responsible Persons, and noted that the Federal Licensing System (FLS) and National Instant Background Check System (NICS) used to conduct background checks "are simply not designed to accommodate SEA requirements." The ATF stated that despite the obstacles it "has implemented appropriate procedures to ensure that [Employee Possessors] receive the required background checks." The ATF then stated that it is in the process of establishing

additional procedures to ensure that background checks are completed as expeditiously as possible, including procedures for referring cases of individuals for whom the Federal Bureau of Investigation (FBI) could not conclude background checks to ATF field offices.

The OIG's Analysis: The ATF's proposed actions are partially responsive to the recommendation. We accept the ATF's statement that it is in the process of establishing controls to ensure that background checks are accomplished as expeditiously as possible. By June 15, 2005, please provide copies of the additional procedures established and status reports on the accomplishment of background checks on Employee Possessors. In addition, please provide a copy of the procedures established for referring cases of incomplete background investigations to ATF field offices and a listing of the cases referred, by Field Division, including the status or final outcome of the 297 outstanding cases identified on page 30 of this report. Finally, please provide the roster of individuals who attend the planned FBI training in May 2005.

Although the ATF response addresses its efforts to improve future background checks, the response fails to address how it intends to identify and correct the case files of applicants who did not receive background checks. As described on page 23 of this report, our sample found that about 9 percent (59 of 683) of SEA applicants processed by the ATF had no corresponding background check in the FBI's NICS system. The ATF response indicates that this may have occurred because the 59 Employee Possessors may not have had a background check, because the background check was not conducted using the FBI's NICS system, or because of incomplete or inaccurate data entry. The ATF stated that it "will follow up on these 59 [Employee Possessors] to ensure that appropriate checks were in fact completed and resolved."

The ATF's response fails to fully address the problem we reported. The individuals we identified were part of a sample of Employee Possessor applicants in the ATF's FLS system. Extrapolating from the 9 percent rate of missing background checks in our sample, we estimate that there may be more than 3,400 individuals in the FLS who have not received a NICS background check. All of these individuals must be identified and checked, not just the 59 in our sample. By May 1, 2005, please provide us with ATF's planned actions to identify all Employee Possessors who have no FBI NICS E-Check recorded in FLS to ensure that all of these individuals receive a NICS background check. These actions should be consistent with the actions that the ATF takes in response to Recommendation 3.

In its response to this recommendation, the ATF commented that “the OIG also concludes that ATF failed to complete the background checks for 655 of 1,157 [Employee Possessor] records reviewed and identified by the FBI as possible prohibited persons, or 57 percent of OIG sample.” The ATF response indicates that the ATF believes these persons to be “delayed” Employee Possessors. The ATF described a scenario in which the FBI reports an unresolved arrest record. The ATF stated that it cannot render a decision based solely on an arrest, but must resolve the disposition prior to rendering a final determination to deny the individual. The ATF concluded this section of its response by stating that it will ensure resolution of each of the 655 “delayed” Employee Possessors.

The ATF’s comments regarding the 655 individuals contain significant errors. Most significantly, the 655 individuals we identified were not “delayed” Employee Possessors for whom the FBI was unable to complete the background check and provide a “proceed” or “deny” response to ATF. To the contrary, all of these 655 individuals had been identified by the FBI as possible prohibited persons and had been recommended for denial (see page 28 of the report). These possibly prohibited persons are different from the 297 individuals that we identified (see discussion beginning on page 29) for whom the FBI had been unable to complete a background check, but for whom the ATF had not referred to ATF Field Divisions for further review.

The ATF response also stated it issued denial letters to four Employee Possessors identified by NICS as convicted felons (see page 29 of the report). This response is inadequate. The four individuals identified in the report were only examples of a much larger group of potentially prohibited persons identified by the FBI for whom the ATF had failed to take action. That group includes the 655 individuals that the FBI had identified as potential prohibited persons as well as the 297 individuals for whom the FBI had identified possibly prohibiting factors but could not complete the background checks. Further, the ATF may identify additional prohibited persons once it identifies all individuals for whom no background check has been conducted (which we estimate to be more than 3,400 individuals) and completes the required checks.

By May 1, 2005, please provide the ATF’s planned actions to complete its adjudication process for the 655 individuals identified by the FBI as possible prohibited persons, as well as the planned actions to complete the background checks on the 297 outstanding cases of individuals for whom the FBI could not complete background checks.

These actions should be consistent with the actions that the ATF reports in response to Recommendation 3.

Recommendation 2: Establish milestones and controls to ensure that Employee Possessor applicants do not remain in a “pending” status in the FLS for extended periods. As an immediate action, NLC management should regularly generate an aging report for pending cases, setting priorities for resolving those cases that have been in a pending status for more than 45 days.

Status: Resolved – Open

Summary of the ATF’s Response: The ATF concurred with this recommendation and stated that it plans to develop “a system-generated monthly report” for all active applicant and renewal Federal Explosives Licensees of each Responsible Person or Employee Possessor who remains pending beyond 60 days. The Federal Explosives Licensing Center will ensure that a final determination is completed for these pending Responsible Persons or Employee Possessors.

The OIG’s Analysis: The ATF’s proposed action is responsive to the recommendation. We accept the ATF’s proposed alternative of generating a report on Employee Possessors remaining in pending status longer than 60 days rather than 45 days.

By June 15, 2005, please provide us with copies of the system-generated monthly reports on Employee Possessors remaining in pending status and documentation demonstrating that a final determination has been completed and entered for those Employee Possessors.

Recommendation 3: Implement procedures to ensure the integrity, completeness, and accuracy of the Employee Possessor information in the FLS. To correct the current data problems, the ATF should conduct a 100 percent cross-match of the names of individuals issued licenses and permits by the ATF with the names of individuals on whom the FBI conducted NICS checks, and then:

— Conduct background checks on any individuals contained in the ATF licensing system but not confirmed as having been checked by the FBI.

— **Immediately recheck the license status of all individuals determined by the FBI to be prohibited persons and ensure those individuals are denied access to explosives.**

— **For any individual that the FBI has recorded a NICS background check under the NLC’s NICS user identification number, but for whom the ATF has no record in its licensing system, determine whether the person is involved in the explosives industry. If the person is, enter the individual into the ATF’s licensing system, and, if not, conduct an investigation to determine who may have performed the background check and why.**

Status: Unresolved – Open

Summary of the ATF’s Response: The ATF did not concur with this recommendation. While stating that it is constantly reevaluating the FLS system to identify new methods to improve FLS data and has instituted new methods to ensure data accuracy, the ATF said it disagrees with the report’s “underlying assumption that the ATF FLS and the FBI NICS systems must be mirror images of one another.” The ATF indicated that reconciliation of its FLS database and the FBI NICS database is not critical, but stated that “it would be extremely helpful for ATF to be able to access the FBI audit log and any FBI research.” However, FBI regulations preclude ATF access to the FBI audit log.

The OIG’s Analysis: The ATF’s comments are not responsive to the recommendation. The ATF’s nonconurrence is based on its characterization of the OIG report as having an “underlying assumption” that the ATF’s FLS and the FBI’s NICS systems must be mirror images. That is incorrect. We recognize that there are legitimate reasons for differences in the FBI and ATF systems. However, the differences should be the result of specific decisions made on each case, and not caused by errors. We maintain that the information in the ATF’s FLS should be complete and accurate. As detailed beginning on page 37 of this report, that currently is not the case. Our review identified significant discrepancies in the data contained in the ATF’s FLS regarding the status of Employee Possessors that undermined its utility for effectively managing the implementation of the SEA.

Further, the FLS did not accurately reflect that a thorough background check had been conducted or provide a completed clearance status for each Employee Possessor. As documented in the report, we found that 9 percent of Employee Possessor records did not contain

evidence that a background check had been requested, 30 percent of Employee Possessor records had not been updated to accurately reflect the results of background checks, and 2 percent of the individuals for whom the FBI conducted background checks did not appear in the FLS. We also found that the FLS contained numerous spelling errors and illogical data.

To correct the existing deficiencies and ensure the integrity, completeness, and accuracy of Employee Possessor information in the FLS, we recommended that the ATF compare its records with the most accurate records available – the FBI’s NICS records. Although it did not concur with this recommendation, the ATF offered no alternative approach for correcting the unacceptable level of discrepancies we found in FLS data.

Regarding the ATF’s comments that ATF final determinations may or may not mirror the FBI determinations, we asked the ATF to identify cases where that occurred. Out of the more than 55,000 Employee Possessor records in the FLS, the ATF identified only 2 cases in which the FBI recommended that an applicant be approved but the ATF denied the applicant, and 12 cases in which the FBI recommended denial but the ATF ultimately approved the applicant.

By May 1, 2005, please provide documentation of the new methods implemented by the ATF to ensure accuracy of FLS data. In addition, please inform us of how the ATF intends to identify and correct the existing data errors in the FLS, specifically including actions to ensure that all Employee Possessors received a NICS background check and that the results of the NICS background check and the ATF’s final determination are completely and accurately reflected in the FLS database for all Employee Possessors.

Also by May 1, 2005, please respond to the recommendation that the ATF identify the source of explosives-related NICS checks for individuals who do not appear in the FLS database and take action to either enter the individuals in the FLS database or take action to ensure that the FBI NICS E-Check system is not being misused. In addition, please inform us of the actions the ATF has taken to complete its adjudications, and the determinations made, for all individuals identified as potentially prohibited persons by the FBI.

By June 15, 2005, please provide a status report on the ATF’s efforts to identify Employee Possessors who had no record of having received an FBI NICS E-Check in the FLS, including the number of

records checked, the number of Employee Possessors that did not have a NICS E-Check recorded in the FLS, and the action taken to ensure that a background check was conducted on each of these individuals.

Recommendation 4: Implement quality control procedures, data entry protocols, and system modifications to ensure FLS data accuracy, including:

— **Modification of the FLS to ensure that an Employee Possessor has only one status, system-wide, no matter how many licenses or permits are associated with the individual.**

— **Modification of the FLS to prevent the entry of illogical or incomplete data.**

— **Modification of the FLS to preclude the entry of Employee Possessor information into the FLS without a NICS background check having been completed.**

Status: Resolved – Open

Summary of the ATF’s Response: The ATF partially concurred with this recommendation, stating that “To the extent that existing information systems and resources allow, ATF concurs that it will implement quality control procedures and data entry protocols in FLS to: (a) ensure an individual [Employee Possessor’s] current status is reflected in all FLS records; and, (b) prevent the entry of inaccurate data.” The ATF did not concur with the recommendation to preclude entry of Employee Possessor information into the FLS unless the NICS background check has been completed because it was revising the data entry process.

The OIG’s Analysis: The ATF’s proposed actions for the first two parts of this recommendation are responsive. By June 15, 2005, please provide us with documentation of all FLS quality control procedures and data entry protocols as well as copies of reports of quality control checks that demonstrate the procedures and protocols are being enforced.

Regarding the third part of this recommendation, the ATF response indicated that it has implemented other changes that make unnecessary the recommended controls over entry of information into the FLS to ensure NICS E-Checks are conducted. Specifically, at the time of our review, the submission of the NICS E-Check and the entry of information on Employee Possessors into the FLS were carried out by different

individuals at different times. The ATF response indicated that new procedures call for these entries to be made simultaneously by the same data entry clerk. Further, under the new procedures as described in the ATF's response, the FLS entry is required in order to identify the explosives licensee that the Employee Possessor is associated with on the NICS E-Check. We accept that the changes described by the ATF will reduce the likelihood that individuals without NICS E-Checks will be entered into the FLS. Therefore, we have removed the third part of this recommendation from the report.

Recommendation 5: Use existing NLC Employee Possessor information to provide a monthly listing to each Field Division of the licensees in their jurisdiction, the number of Employee Possessors, and the date the company last reported an Employee Possessor to determine the most egregious cases of licensees who have failed to notify the ATF of new hires.

Status: Unresolved – Open

Summary of the ATF's Response: The ATF did not concur with the recommendation, stating that "It is not necessary nor is it legally required to conduct monthly inspections of all [Federal Explosives Licensees] employee possessor information." The ATF stated that devoting resources to such a task would divert Inspectors from conducting routine but critical firearms and explosives inspections.

The OIG Analysis: The ATF's comment misstates the OIG's recommendation and fails to address the problem that the recommendation was intended to address. The OIG did not recommend that the ATF conduct monthly inspections of explosives licensees. As described on page 37 of this report, we found that most explosives licensees, including many of the largest explosives companies in the country, had reported no new employees since they submitted their initial applications under the SEA, beginning in May 2003. Although the companies had not reported hiring any new workers, we found that some of these same companies were advertising to hire explosives workers. The SEA required that new employees with access to explosives must be reported to the ATF within 30 days of their being hired so that the ATF could conduct the required background checks. It is incumbent on the ATF to exercise due diligence by taking reasonable steps to identify companies that are not complying with the SEA's reporting requirements.

To fulfill that responsibility, we recommended that the ATF use its existing FLS database to generate monthly reports listing the companies

in each ATF Field Division according to the number of Employee Possessors previously reported and the date these companies last reported hiring a new employee. Because ATF Inspectors and Area Supervisors are most knowledgeable of explosives operations and activities within their Division, we recommended providing these individuals with information to help identify potential instances of noncompliance and ensure that all persons having access to explosives receive timely background checks.

By May 1, 2005, please address this recommendation by providing us with a plan for issuing reports on explosives licensees (according to Field Division, number of Employee Possessors, and date of last reported new hire) so that the Field Divisions can ensure that explosives licensees are complying with SEA reporting requirements. By June 15, 2005, please provide us with revised data identifying, by month, the number of explosives licensees that have reported new employees and received amended Notices of Clearance through May 30, 2005. Please segregate and identify separately any amended Notices of Clearance that were issued for reasons other than to report clearance determinations on new employees.

Recommendation 6: Take action to ensure that there is no unauthorized or inappropriate use of the FBI NICS E-Check system. As an immediate action, the ATF should cancel the NLC's NICS user identification number and assign unique user identification numbers to each individual responsible for conducting the checks.

Status: Unresolved – Open

Summary of the ATF's Response: The ATF did not concur with our recommendation to assign unique user identification numbers to each individual responsible for conducting NICS E-Checks. The ATF stated that the NICS E-Check system is designed to capture the name of each ATF employee conducting a background check, and therefore individual identification numbers are not needed. The ATF acknowledged that in the past there may have been instances where Employee Possessors received a NICS check but were not entered in the FLS but stated that it is taking corrective actions such as implementing quality control procedures and data protocols to remedy these problems.

The OIG's Analysis: The ATF's comments do not address the core issue raised by our recommendation because it does not indicate whether the ATF it intends to take any action to identify the source of the 2 percent of checks we found that did not appear in the ATF's database.

At this rate, about 700 of the 35,017 checks conducted by the FBI would not appear in the FLS. The ATF identified one of these individuals when it examined a sample of 52 individuals identified as potential prohibited persons by the FBI (see page 28). However, as of March 2005 the ATF had yet to locate any records in the FLS related to that individual.

By May 1, 2005, please describe how the ATF intends to identify individuals recorded in the FBI's NICS system as having been checked using the NLC's certificate but who do not appear in the ATF's FLS. Further, please provide the ATF's plan for identifying the source of these checks and determining the appropriate authorization status of the individuals beginning with those individuals listed in the FBI's system as having been potentially prohibited persons.

Recommendation 7: Improve the consistency of regulatory determinations by designating a single point of contact at ATF Headquarters for Inspectors and explosives industry members. The point of contact should maintain a history of regulatory inquiries and post frequently requested information on the ATF's website.

Status: Unresolved – Open

Summary of the ATF's Response: The ATF did not indicate concurrence or nonconcurrence with the recommendation. However, the ATF's response described the activities of its Explosives Industry Programs Branch as evidence that it is meeting the recommendation's intent.

The OIG's Analysis: While the ATF stated that it is already in compliance, we are not resolving the recommendation because the activities described are not fully responsive to the recommendation. The intent of our recommendation was to improve the consistency of regulatory determinations by designating a single point of contact for specific regulatory areas, making those individuals responsible for maintaining a history of inquiries, and disseminating regulatory determinations widely through the ATF's website. The activities of the Explosives Industry Programs Branch described by the ATF in its response indicated that it maintains a history of regulatory inquiries and responds individually to "hundreds of letters, facsimiles, phone calls, and other inquiries from industry and from ATF personnel" regarding explosives issues. However, the only wide dissemination of information identified by the ATF is the twice yearly newsletters sent to industry members. Further, the ATF response does not address our

recommendation that it post frequently requested information on its website.

By May 1, 2005, please provide the following: copies of any evaluations of how information is processed and communicated to ATF Field personnel and the explosives industry and a copy of any log of inquiries received by the Explosives Industry Programs Branch and the responses provided since May 2003. Also, please provide a list of the industry events, seminars, and conferences attended by Branch staff and copies of any presentations given by those individuals during FY 2005. Finally, please respond specifically to the recommendation to post answers to frequently asked questions on the ATF's website.

Recommendation 8: Examine alternatives for speeding the delivery of the ATF's Advanced Explosives Training course to all Inspectors, and develop a curriculum to build explosives expertise within the ATF's Inspector workforce.

Status: Resolved – Open

Summary of the ATF's Response: The ATF response did not indicate concurrence or nonconcurrence, but described the actions it is taking to improve training provided to ATF Inspectors on SEA implementation. Among other things, the ATF said it will provide the advanced explosives training course three times in fiscal year (FY) 2005 and four times in FY 2006. In addition, the ATF stated that it has "designed and developed the advanced explosive training curriculum to build upon the expertise of the Inspector workforce obtained through previous training classes and on-the-job training." The training cited by the ATF included the Advanced Explosives Training for Inspectors, Chemistry of Pyrotechnics, and the Mine Safety and Health Administration seminars. The ATF also plans to provide each Field Division with a variety of explosives training materials and training aids to be utilized during mandatory roll-call training at the Area Office level, including table of distance reviews and exercises, a multimedia database of explosive product identification, and training on other topics. Accordingly, the ATF concludes that it is already implementing this recommendation.

The OIG's Analysis: The OIG considers this recommendation resolved as the actions described are responsive to our recommendation. By June 15, 2005, please provide copies of the training materials and training aids provided to Field Divisions for use during roll-call training; a copy of the Explosives Multimedia Database; and the dates of delivery

and attendance rosters for classes in Advanced Explosives Training for Inspectors and the Chemistry of Pyrotechnics.

Recommendation 9: Develop a detailed timeline for accomplishing the actions necessary to complete the implementation the National Explosives Licensing Center in Martinsburg, West Virginia, including the implementation of changes to the licensing and background check processes, the adjudication process for Employee Possessors, and the data systems that will support these processes.

Status: Resolved – Open

Summary of the ATF’s Response: The ATF’s response stated that it is already implementing this recommendation, which we accept as concurrence. The ATF stated that “a detailed timeline has been prepared for the completion of the FELC [Federal Explosives Licensing Center] in West Virginia.” The ATF further stated that it expects to transition all activities related to explosives licensing to the FELC by the end of FY 2005.

The OIG’s Analysis: The ATF’s proposed action is responsive to the recommendation. By May 1, 2005, please provide us with a copy of the detailed timeline described, and a status report on the transition of explosive licensing activities to the FELC.

Recommendation 10: Develop comprehensive plans, funding requests, industry notices, proposed regulations, and other necessary documents to implement the authority granted under the SEA to collect and catalog samples of explosives at the ATF National Laboratory.

Status: Unresolved – Open

Summary of the ATF’s Response: The ATF’s response stated that it is already implementing this recommendation, which we accept as concurrence. However, the ATF response does not indicate that the ATF is planning to act to correct the deficiencies we found. Therefore, this recommendation is not resolved.

In its response, the ATF stated that collecting and cataloging explosive samples as allowed by the SEA requires “personnel, appropriate databases, and suitable storage facilities for collected samples.” The ATF stated that its implementation plan, described in its

Laboratory Services' FY 2005 Operating Plan, included action items such as completing development of the ATF Explosive Materials Database, proposing contracts for development of the Database of U.S. Commercial Explosives, formalizing explosive sample collection protocols, and advising industry of collection protocols as necessary. The ATF concludes by disagreeing with the OIG's statement that the ATF is making little progress on its efforts to implement the collection of samples as authorized by the SEA.

The OIG's Analysis: We have reviewed copies of the ATF's agreement with an engineering consultant to develop preliminary design drawings for a storage facility and a project plan for a contractor "to identify and produce the functional requirements for a data set that characterizes the formulation of explosives and smokeless powder and develop a database working prototype." These documents, which are basically "plans to plan," are a start. However, they are far from a comprehensive plan for implementing the authority authorized by the SEA to collect and analyze explosives samples. The ATF was granted this authority in November 2002. As of January 2005, the ATF had not created any databases, had not built any storage facilities to house samples, had not hired any new scientists to conduct analyses of explosives sample, and had collected only one sample.

By June 15, 2005, please provide a copy of a comprehensive plan that identifies the specific steps needed to fully implement the sample collection program, including funding requests, industry notices, proposed regulations, and other documents necessary to implement the authority granted under the SEA to collect and catalog samples of explosives at the ATF National Laboratory.

THE ATF'S COMMENTS ON THE NARRATIVE OF THE REPORT

In addition to addressing the report's recommendations, the ATF response contained commentary regarding various findings in the draft report. In this section, we summarize and provide our analysis of these ATF comments.

1. ATF information systems are ineffective for managing the explosives licensing functions mandated by the SEA.

The ATF's Comment: The ATF stated that it has invested approximately \$1.5 million on modifications to the FLS, the core application for the FELC, and other ATF systems to accommodate the

provisions of the SEA. The ATF response listed five specific modifications made to the FLS.

The OIG’s Analysis: The ATF comments accurately report the modifications it made to the FLS. However, notwithstanding those modifications, the FLS still cannot be used by ATF officials to effectively manage the explosives licensing functions mandated by the SEA. Among other things, the FLS cannot easily identify individuals who have not had background checks conducted by the FBI, cannot easily identify individuals with a different status in different records, does not automatically identify individuals whose status is pending for excessive periods of time, and is not designed with data correction protocols to identify and prevent the entry of illogical or obviously incorrect data.

2. The ATF does not timely adjudicate appeals from individuals seeking reconsideration of prohibited person status.

The ATF’s Comment: The ATF noted that contrary to terminology used in the draft report, “appeals” apply to individuals who have been found to be “prohibited” and wish to dispute that finding, while Relief of Disability (ROD) “applications” are submitted by persons who admit to being prohibited but wish to apply for relief. In addition, the ATF stated that ROD applications trigger an “exhaustive field investigation” that can take 60 days to complete, according to ATF guidelines. The ATF further stated that the OIG failed to recognize that ATF Special Agents may request an extension of an additional 60 days “where necessary.”

The ATF stated it does not dispute that the average investigation time to adjudicate these applications could take up to 120 days. It also agreed that the 13 applications cited in our report on page 41 took more than 6 months to complete, but stated that this is not an unreasonable amount of time to thoroughly investigate a person’s background before granting someone relief from explosives disabilities.

The ATF further comments that a more balanced appraisal of the timeliness of ROD decisions would treat “granted” applications differently than “denied” applications because, according to ATF analyses, denials take longer in part to ensure applicants are provided “due process” protections through additional review procedures. The ATF stated that it will update the “Office Procedures” to include a more appropriate length of time to adjudicate applications.

The OIG's Analysis: To address the ATF's concerns over the potential confusion between the terms "appeal" and "application," we substituted the word "request" for the word "appeal" in the body of the report. The ATF also objected in a footnote to the OIG's characterization of grants of relief as overturning the original decision. To address this concern, we clarified that the ATF action granted relief from the initial decision. We also note that in response to the report we issued in July 2004 on our *Review of the ATF's Enforcement of Brady Act Violations Identified Through NICS* and in subsequent communications, the ATF has agreed that it would use staff other than Special Agents to gather documents and carry out other routine aspects of the investigation process in cases of denials for firearms purchasers. We believe that a similar approach would be appropriate in explosives Relief of Disability cases.

Regarding the ATF's statements that it would not be unreasonable for adjudications to take six months or more to process, we note that the draft order the ATF gave us during our review only provided 60 days for the field investigation. If the ATF believes that a longer time is necessary, then it should revise the draft order before it is finalized.

We disagree with the ATF's concern that the OIG's report may "mislead readers into thinking that the industry and relief applicants are experiencing undue delays in relief determinations." As we describe in our report, most applicants are granted relief. Further, some applicants are found not to have merited denial in the first place. In order for these individuals to resume their work activities, the ATF adjudication process should be carried out as expeditiously as possible, while exercising all due care to identify and deny relief to individuals who pose a threat to public safety.

3. ATF does not plan to conduct background checks on all Employee Possessors until 2006.

The ATF's Comment: The ATF stated that a better way to state the above concept is: "The law does not require background checks on all [Employee Possessors] until all existing businesses qualify under [the] SEA in 2006."

The OIG's Analysis: To address the ATF's concern, we changed the sentence to read: "Due to the phased implementation required by the SEA, the ATF will not conduct background checks on all Employee Possessors until 2006...."

4. Inadequate training for ATF Inspectors has resulted in a lack of explosives product knowledge and inconsistent regulatory enforcement; and, it will take up to seven years for all ATF Inspectors to complete the ATF’s revised training course.

The ATF’s Comment: The ATF stated that it believes it has improved its training courses, expanded its focus on on-the-job training, and successfully strengthened its expertise throughout the ATF. After extensively describing improvements to various training programs, the ATF went on to say that, “ATF is aware that Inspectors from different field divisions are sometimes inconsistent in their advice to industry.” However, the ATF concluded this comment by suggesting that the number of instances in which incorrect information has been received may be overstated.

The OIG’s Analysis: We accept the ATF’s descriptions of improvements to its training programs. However, as we documented in this report, ATF Inspectors and industry members told us of problems with Inspector training and inconsistent regulatory interpretations. We encourage the ATF to consider the problems reported to us as it seeks further to develop the expertise of its workforce and improve the consistency of its oversight of the explosives industry.

5. ATF attempted to increase its oversight of explosives transportation in the beginning of 2003.

The ATF’s Comment: The ATF stated that the OIG report incorrectly suggests that the Department of Justice’s Office of Legal Counsel limited ATF jurisdiction to enforce section 842(i) to the SEA’s three new prohibited person categories. The ATF further commented that the report incorrectly suggests that the ATF regulated explosives transportation. Instead, the ATF stated that it enforced section 842(i) against all persons transporting explosives since 1970. Finally, the ATF stated that the report suggests that the ATF improperly imposed an unnecessary burden on industry when it began requiring that all drivers hired to transport explosive materials complete a form certifying that they were the individuals who would transport the explosive materials from a seller to a buyer.

The OIG’s Analysis: We made two minor edits on pages 10 and 11 in the Background section of the report to address the ATF’s concerns. The edits did not substantively change the report.

6. If ATF had issued a Notice of Proposed Rulemaking, rather than an Interim Rule, “...explosives industry member[s] would have been afforded the opportunity to comment on ATF’s plans prior to implementation.”

The ATF’s Comment: The ATF cited two inaccuracies in the draft report. In the first, the report states that the ATF issued interim regulations before the provisions of the SEA took effect. In the second, the report incorrectly states the order in which “proposed rules” and “interim regulations” are issued.

The ATF also stated that “it is apparent that the OIG believes that ATF should have issued a notice of proposed rulemaking rather than an interim rule.” The ATF went on to explain why it invoked the “good cause” exception authorized by the Administrative Procedures Act which governs notice and comment procedures for federal rulemaking. The ATF further commented that the report “implies that a proposed rule was not issued because of ATF’s inability to act in a timely manner, rather than the lengthy time involved in the usual notice-and-comment rulemaking process.”

Finally, the ATF provided a revised date of “in or about October 2006” for issuance of final SEA rules.

The OIG’s Analysis: To address the ATF’s comments, we changed the text on page 8 of our report to read “shortly before the *Employee Possessor* provisions of the SEA took effect on May 24, 2003.” To address additional ATF concerns, we revised the description of the process to read “ATF Headquarters officials stated that, due to time constraints and the lengthy time involved in the usual notice and comment rulemaking process, the agency decided to issue interim regulations.” Our description of the general process for conducting rulemakings was accurate and was not changed.

On page 24 of its response, the ATF stated that it was “technically true that ATF was unable to issue a proposed rule due to time constraints.” However, the ATF stated that it finds the OIG’s description of the rulemaking process to be misleading because, according to the ATF, the OIG “implies that a proposed rule was not issued because of ATF’s inability to act in a timely manner, rather than the lengthy time involved in the usual notice-and-comment rulemaking process.” We disagree. The OIG’s description of the ATF rulemaking process is a factual presentation and contains no implied commentary on the

timeliness of the ATF. Finally, we updated the report to include the ATF's revised timeline by which it intends to issue final rules.

7. Miscellaneous comments on OIG inaccuracies.

The ATF offered a series of minor corrections to dates and citations referenced in the draft report. Where appropriate, the OIG made the corrections.

THE ATF'S RESPONSE TO ADDITIONAL ISSUES SECTION AND APPENDIX I

The ATF's Comment: The ATF stated that the "Additional Issues" section should be removed from the report because the section appears "to cast responsibility on ATF for matters not under its control." The ATF further requested that we remove a reference to ongoing policy decisions related to explosives regulation.

In addition, the ATF requested that we remove Appendix I or clarify that the analysis contained in this section was conducted by the OIG review team and not the ATF's National Repository.

The OIG's Analysis: In response to the ATF's comments, we removed one sentence from the Executive Digest related to an ongoing policy discussion on explosives regulation.

Regarding the ATF's request that we delete the "Additional Issues" section of the report, we decline the request. This information is provided to inform the reader on other issues pertinent to explosives regulation and public safety. The discussion is segregated from the discussion of ATF's implementation of the SEA, and the presentation makes it clear that the section addresses matters that are not the responsibility of the ATF. In fact, a central point of the section is highlighting issues that are currently beyond the ATF's control.

Appendix I was included to provide readers with information on the number and types of bombing incidents that have occurred in recent years. In response to the ATF's comments, we made changes to Appendix I to clarify the categorization of explosive incidents and incorporate updated data provided by the ATF.