H.R. ______

To establish reasonable controls on firearms manufacturers and importers, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

Mrs. CAROLYN B. MALONEY of New York introduced the following bill; which was referred to the Committee on ________________

A BILL

To establish reasonable controls on firearms manufacturers and importers, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Firearm Industry Crime and Trafficking Accountability Act”.

SEC. 2. FINDINGS.

The Congress finds as follows:

(1) The firearm industry has engaged in dangerous business practices, flooding American comm-
munitions with weapons of war like AR–15s and other semiautomatic weapons. Despite these practices, the firearm industry is not required to monitor its distribution to ensure that its products are not used for unlawful purposes.

(2) A study conducted by the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) found that 5 percent of licensed dealers sell about 90 percent of guns used in crimes (also known as “crime guns”). Firearm manufacturers, through trace data provided by the ATF, often know exactly which dealers and distributors disproportionately sell these crime guns.

(3) Despite these indicators of diversion, firearm manufacturers have failed to adequately curtail their distribution practices and sought to evade any responsibility for preventing the widespread misuse of their products—rejecting ATF resources and failing to effect change at the top of the distribution pyramid.

(4) Firearm manufacturers also sell dangerous firearms to distributors and retailers who, according to ATF data, can fail to comply with Federal firearms law. The Trace analysis of 2,000 firearms dealers cited by the ATF found that half of the dealers
sold firearms to customers without conducting the
background checks required by Federal law. Fire-
arms dealers often flouted Federal laws and regula-
tions, sold weapons to convicted felons and domestic
abusers, lied to investigators, and falsified records.

SEC. 3. REQUIREMENT TO CREATE REASONABLE CON-
TROLS AND MONITORING SYSTEM.

Each manufacturer or importer of firearms in or af-
flecting interstate commerce shall implement reasonable
controls to prevent, and create and maintain a monitoring
database to retain essential facts concerning, the criminal
diversion or potential misuse of their products.

SEC. 4. PROHIBITED ACTIVITIES.

It shall be unlawful for any manufacturer or importer
of firearms in or affecting interstate commerce to—

(1) supply a firearm to a distributor or retailer
of the firearm, knowing or having reasonable cause
to believe that the distributor or retailer has failed
to implement reasonable controls or engaged in dis-
tribution, sales, or other practices likely to result in
a high risk of criminal diversion or misuse;

(2) fail to investigate or inquire as to the dis-
tribution practices of such a distributor or retailer,
knowing or having reasonable cause to believe that
the distributor or retailer has failed to implement
reasonable controls or engaged in distribution, sales, or other practices likely to result in a high risk of criminal diversion or misuse; or

(3) supply a quantity of firearms to a State or distribution area, knowing or having reasonable cause to believe that the quantity exceeds the lawful demand for firearms in the State or distribution area.

SEC. 5. REQUIRED ACTIVITIES.

Each manufacturer or importer of firearms in or affecting interstate commerce shall—

(1) report to the Director on any pattern, distribution, or repeated instances of a distributor or retailer of a firearm whom the firearm manufacturer or importer knows or has reasonable cause to believe has failed to implement reasonable controls or engaged in distribution, sales, or other practices likely to result in a high risk of criminal diversion or misuse;

(2) report to the Director annually, in such form and manner as the Director shall prescribe, all instances of criminal diversion or misuse of a product distributed or sold by the manufacturer or importer, as the case may be, of which the manufacturer or importer, as the case may be, is aware, and
shall include in the report an itemization of the firearms involved by category; and

(3) keep for a period of 5 years all trace records, relevant communications, and other relevant information pertaining to the monitoring database of the manufacturer or importer, as the case may be.

SEC. 6. EXEMPTIONS.

(a) In General.—Sections 3 through 5 shall not apply to a manufacturer who manufactures fewer than 3,000 firearms per year.

(b) Waiver Authority.—The Director may waive the applicability of such sections to a manufacturer who manufactures not more than 6,000 firearms per year, on finding that the provision of such a waiver will not harm public safety, except that the Director may not provide such a waiver to a manufacturer who manufactures a semiautomatic firearm or any copy, duplicate, variant, or altered facsimile with the capability of a semiautomatic firearm.

SEC. 7. DEFINITIONS.

In this Act:

(1) ATF.—The term “ATF” means the Bureau of Alcohol, Tobacco, Firearms, and Explosives.

(2) Criminal Diversion.—The term “criminal diversion” means the unlawful sale or distribution of
a firearm by, to, or through a firearm trafficker,
straw purchaser, or person prohibited by law from
possessing a firearm, and any transfer or possession
of a firearm in violation of law.

(3) DIRECTOR.—The term “Director” means
the Director or the Acting Director of ATF.

(4) ESSENTIAL FACTS.—The term “essential
facts” means crime gun trace data, information on
distributor or retailer compliance with ATF inspec-
tions, information on distributor or retailer compli-
ance with State inspections, where applicable, infor-
mation concerning distributor or retailer compliance
with applicable background check requirements with
respect to firearms sold by the manufacturer or im-
porter, and such other information as the Director
may deem useful in preventing criminal diversion or
misuse of firearms.

(5) FIREARM.—The term “firearm” has the
meaning given the term in section 921(a)(3) of title
18, United States Code.

(6) IMPORTER.—The term “importer” has the
meaning given the term in section 921(a)(9) of title
18, United States Code.
(7) MANUFACTURER.—The term “manufacturer” has the meaning given the term in section 921(a)(10) of title 18, United States Code.

(8) MONITORING DATABASE.—The term “monitoring database” means a system capable of incorporating and analyzing—

(A) information obtained from gun trace data, ATF notifications, dealer inspections, and State and local law enforcement notifications; and

(B) such other information as the Director may deem important and useful.

(9) REASONABLE CONTROLS.—The term “reasonable controls” means procedures or practices designed to prevent the unlawful sale or distribution of a firearm, including by preventing such a sale to a firearm trafficker, straw purchaser, person prohibited by Federal or State law from possessing a firearm, or person who the seller knows or has reasonable cause to believe will use a firearm unlawfully or for self-harm.

(10) SEMIAUTOMATIC FIREARM.—The term “semiautomatic firearm” means any repeating firearm which utilizes a portion of the energy of a firing cartridge or shell to extract the fired cartridge case
or shell and chamber the next round, and which re-
quires a separate pull of the trigger to fire each car-
tridge or shell.

(11) STRAW PURCHASER.—The term “straw pur-
purchaser” means a person who, in connection with
the acquisition or attempted acquisition of a firearm,
makes any false or fictitious oral or written state-
ment intended to conceal that the purchase is being
made on behalf of a third party, unless the acquisi-
tion or attempted acquisition is for the purpose of
making a bona fide gift to a third party who is not
prohibited by law from possessing or receiving a fire-
arm. For purposes of the preceding sentence, a gift
to a third party is not a bona fide gift if the third
party has offered or given the purchaser a service or
thing of value to acquire the firearm for the third
party.

SEC. 8. PENALTIES.

(a) ADMINISTRATIVE REMEDIES.—With respect to
each violation of section 3, 4, or 5, the Director shall, after
notice and opportunity for hearing, subject the violator to
a civil penalty, in an amount to be determined by the Di-
rector which shall be—

(1) in the case of the 1st such violation by the
violator, not less than $150,000 and not more than
1 percent of the gross annual revenue of the violator;

(2) in the case of the 2nd such violation, not less than $300,000 and not more than 2 percent of the gross annual revenue of the violator; or

(3) in the case of the 3rd or subsequent such violation, not less than $1,000,000 and not more than 6 percent of the gross annual revenue of the violator.

(b) Judicial Remedies in the Case of Knowing Violations.—

(1) In General.—In the case of a violation of section 4 or 5 that the Director determines was committed knowingly, the Director shall also bring a civil action against the violator in the United States District Court for the District of Columbia. If the Director proves the violation by a preponderance of the evidence, the court shall order the Director to place the violator under an ATF monitoring system to prevent criminal diversion of the products of the violator, for not more than 5 years.

(2) License Suspension for Violation While Subject to ATF Monitoring System.—If the Director determines that, while subject to such a monitoring system, the violator has knowingly vio-
lated section 4 or 5, the Director may bring a civil
action in the United States District Court for the
District of Columbia. If the Director proves the violo-
ation by a preponderance of the evidence, the court
shall order the Director to suspend for 3 months any
license issued to the violator under chapter 44 of
title 18, United States Code.

SEC. 9. ADMINISTRATIVE PROVISIONS.

(a) REQUEST FOR RECORDS.—On request of the Di-
rector, a manufacturer or importer of firearms shall pro-
vide the Director with such records as the Director deter-
mines will assist the Director in ensuring compliance with
this Act.

(b) AVAILABILITY OF TRACE DATA.—The Director
may make available to a manufacturer or importer of fire-
arms any data requested by the manufacturer or importer,
as the case may be, from the National Tracing Center or
the Director of Industry Operations.

(c) PROVISION OF INFORMATION TO OTHER FED-
ERAL LAW ENFORCEMENT AGENCIES, OR STATE OR
LOCAL GOVERNMENTS.—On request of a Federal law en-
forcement agency, the Director shall provide information
obtained under this Act to the agency, and may provide
the information to State and local law enforcement au-
thorities.
SEC. 10. ANNUAL REPORT TO CONGRESS.

The Director shall submit to the Congress, and make easily accessible to the public on the website of the ATF, annual reports summarizing the information reported pursuant to section 5(2), which shall include copies of the reports made pursuant to section 5(2) and supporting economic analyses.

SEC. 11. TRADE SECRETS AND CONFIDENTIAL INFORMATION.

This Act shall not be interpreted to require the disclosure of information that is exempt from public disclosure under section 552 of title 5, United States Code (commonly known as the “Freedom of Information Act”).

SEC. 12. REGULATIONS.

Within 18 months after the date of the enactment of this Act, the Director shall promulgate final regulations necessary to implement the preceding provisions of this Act, including regulations necessary to ensure that manufacturers and importers of firearms comply with sections 3 through 5. In promulgating regulations to enforce section 4(3), the Director shall take into account factors such as population, reports of lost and stolen firearms, types of firearms used in crimes, firearms traced to distributors and retailers in other States, and firearm traces.
SEC. 13. EFFECTIVE DATE.

The preceding provisions of this Act shall take effect on the date final regulations are promulgated under section 12.

SEC. 14. REPEAL OF CERTAIN LIMITATIONS ON THE BUREAU OF ALCOHOL, TOBACCO, FIREARMS AND EXPLOSIVES.

(a) REPEAL OF CERTAIN LIMITATIONS ON THE USE OF DATABASE INFORMATION OF THE BUREAU OF ALCOHOL, TOBACCO, FIREARMS AND EXPLOSIVES.—


(6) The 6th proviso under the heading “Bureau of Alcohol, Tobacco, Firearms and Explosives—Salaries and Expenses” in title I of division B of the

(b) **Elimination of Prohibition on Processing of Freedom of Information Act Requests About Arson or Explosives Incidents or Firearm Traces.**—Section 644 of division J of the Consolidated Appropriations Resolution, 2003 (5 U.S.C. 552 note; Public Law 108–7; 117 Stat. 473) is repealed.

(c) **Repeal of Limitations on Imposition of Requirement That Firearms Dealers Conduct Physical Check of Firearms Inventory.**—The 5th proviso under the heading “Bureau of Alcohol, Tobacco, Firearms and Explosives—Salaries and Expenses” in title II of division B of the Consolidated and Further Continuing Appropriations Act, 2013 (18 U.S.C. 923 note; Public Law 113–6; 127 Stat. 248) is amended by striking “and any fiscal year thereafter”.

(d) **Elimination of Prohibition on Consolidation or Centralization in the Department of Justice of Firearms Acquisition and Disposition Records Maintained by Federal Firearms Licensees.**—The matter under the heading “Bureau of Alcohol, Tobacco, Firearms and Explosives—Salaries and Ex-