November 18, 2026

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Before the Subcommittee on Federal Law Enforcement

Of the Committee on Oversight and Government Reform

On the Bureau of Alcohol, Tobacco, Firearms and Explosives' Proposed Rule on Firearms Record Retention

My name is Walfred (Wally) Nelson. I retired from the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) in 2005 as Deputy Assistant Director of the Office of Enforcement Programs and Services. In that role I supervised the National Tracing Center (NTC) from January 1998 until my retirement. Since my retirement I have been a consultant to the firearms industry on ATF compliance matters.

The preamble to the Gun Control Act of 1968 (GCA) states, in brief. "The Congress hereby declares that the purpose of this title is to provide support to Federal, State, and local law enforcement officials in their fight against crime and violence, and it is not the purpose of this title to place any undue or unnecessary Federal restrictions or burdens on law-abiding citizens with respect to the acquisition, possession, or use of firearms ...." The work of the ATF National Tracing Center, including the collection of records from Federal Firearms Licensees (FFLs), is entirely in support of that purpose.

The provisions of the GCA directed the Secretary of the Treasury (since 2003 the Attorney General) to draft record keeping requirements for FFLs. These regulations included records of firearms acquisition and disposition and of transfers of firearms to individuals on ATF Form 4473, Firearms Transaction Record. The regulations also required FFLs to submit their required records to ATF within 30 days of going out of business. These requirements have continued to the present day.

The Evolution of Firearms Recordkeeping Requirements for FFLs

The original 1968 regulations issued under the GCA had no time limit on the requirement to keep firearms records. In other words, they were to be maintained permanently until the FFL went out of business.

In 1985 ATF issued a regulation that allowed FFLs to dispose of their records after 20 years, with the exception that manufacturers and importers had to maintain their acquisition records permanently. Under this retention period FFLs could destroy records over 20 years old, or ATF would accept them because these records were no longer legally required to be

kept. Firearms industry members and ATF personnel, at least when I retired, believed that the records retention period was long settled.

After thirty-seven years, in 2022, ATF issued revised regulations that again required FFLs to maintain their records permanently, until they went out of business. When this change was proposed via a Notice of Proposed Rulemaking (NPRM) in 2021, it was part of an NPRM entitled "Definition of "Frame or Receiver" and Identification of Firearms". The focus of the NPRM was proposed amendments to the regulatory definition of frame or receiver, which is critical in determining when an item is subject to ATF's firearms regulations. The record retention proposal was unconnected to the title of the NPRM.

This record retention change put an increased burden on FFLs due to the continuous accumulation of additional records, the cost of maintaining those records and inability to destroy any records over 20 years old or submit them to ATF. I understand that some FFLs have changed their business structure and received a new FFL so that they could submit their firearms records and relieve themselves of that burden.

ATF's Proposed Reversion of the Record Retention Period to 20 (or 30) Years

Now ATF has proposed via an NPRM (ATF-2026-002; ATF 2025R-08P) to revert the record retention period for firearms acquisition and disposition and firearms transaction records (Form 4473) back to 20 (or 30) years. I support reverting the record retention period to 20 years. Here are my reasons for this recommendation:

1. The retention requirement for almost forty years was 20 years. During my tenure managing the NTC I do not recall any issues with traces not being completed because FFLs had destroyed records that were over 20 years old.

2. In its documentation for this NPRM ATF bolsters my recollection when it stated *"ATF uses a specific closure designation for traces when a licensee informs ATF that it does not have records for that firearm because the records were more than 20 years old and had been destroyed. In FY 2014, ATF conducted 350,063 traces. Of these, 0.34 percent, or 1,175, were closed for this reason. Of 469,842 total traces in FY 2020, only 0.31 percent, or 1,463, traces were closed for the above reason, and FY 2021 saw another decline in traces closed with this designation to 0.26 percent, or 1,349, out of 528,058 traces."*

3. In the same documentation ATF reported that for 2026 89% of all traces involved records less than 20 years old.

4. ATF also reported from a review of licensing records that only 19% of FFLs licensed in 2006 were still licensed in 2026, meaning 81% of current FFLs would not have to look at records over 20 years old in responding to a trace.

5. ATF designates the period between a retail sale by an FFL and its recovery and tracing by a police agency as the time-to-crime or TTC. In its documentation for the NPRM ATF calculated that 87% of all traces had a TTC of under 20 years. Further ATF calculated that the median TTC for all traces between 2017 and 2121 at just over three years, meaning half were of the traced firearms were purchased within three years of sale. Approximately 24 percent of all firearms were purchased within one year of their recovery.

6. In 2015 25% of all traces depended on out-if-business records. In 2024 it was only 11%. The older records are becoming less relevant as trace numbers have increased.

I also support the reduction in retention time when a Form 4473, is completed but no firearms transfer occurs. This happens when NICS denies a transaction or there is a NICS delayed response and the buyer never returns, or the store refuses to make a sale. The NPRM reduces the retention time to 5 years. Forms 4473 for NICS denials can be the basis of a federal prosecution for making a false statement, since the denied person certainly lied on the form they completed. Certainly none, would be initiated more that 5 years after the denial.

The NPRM also establishes retention time limits of 90 days for private party transactions, when the FFL does not take possession of the firearm being privately sold (unless there is a NICS denial). Firearms handler NICS checks on prospective employees or an annual check on current employees will also have a 90-day retention period. A firearms handler could be a store employee, a contractor or employees of firearms or ammunition manufacturers. A Form 4473 will be used for firearms handler checks.

ATF's Proposal to Limit Its Retention of Out-of-Business Records to 20 (or 30) Years

ATF has collected out of business records since 1969. The agency has accumulated an estimated 1.3 billion firearms records. I recall that before I retired in 2005 the figure was about five hundred million records. In the NPRM ATF is proposing for the first time to limit its own retention of firearms record to 20 (or 30) years from its receipt of the records from an out-of-business FFL. In the NPRM ATF mentioned that over five hundred million records were over 20 years old, which is the number I recalled.

I fully support this change, but I recommend that the NTC retain out-of-business records for 30 years. That means that ATF would be able to trace firearms up to 50 years from sale. Per ATF 94% of all traces were for sales less than 50 years before. Also, in 1998 Capitol Police officers Chestnut and Gibson were killed by a madman in the Capitol. His firearm was traced to a 1972 sale, twenty-six years before the murders.

This rapid accumulation cannot keep going forever and I do not believe it was Congress' intent to have ATF create and maintain an archive of every firearms sale ever made by every FFL.

From 1991 to 2005 ATF stored images of firearms records on microfilm. The records are identified by the FFL, its FFL number, and the date the records were received. They are stored on reels. Each reel is numbered and the FFLs whose records are on each reel were recorded. There is a microfilm librarian, and tracers who needed a to reel had to sign it out from the librarian. When I retired there were over 50,000 reels of microfilm. They are still there.

Starting in 2005 the NTC began converting OOB records into digital images after it receives them. Images are stored in the Enterprise Content Management ("ECM") image repository for tracing. These images are not searchable by an individual's name or other personal identifiers or through OCR.

In 2025 ATF received an average of 6.5 million records a month, rising to 8 million a month in 2026. The available optical scanning equipment and operating personnel are not sufficient to keep up with this deluge. As a result, ATF has accumulated about 50,000 large boxes of records that are stored in a warehouse until they can be imaged. That is about 120 million pieces of paper. The paper is sorted and indexed by the FFL received from and linked to the box where they are stored. Every day, firearms tracers must locate boxes of stored paper records to complete traces. When the boxes are processed ATF identifies those FFLs who have had significant amounts of traces for priority imaging, because it is easier to complete a trace on imaged records rather than going through boxed records.

Once the older records are destroyed, tracing processing should improve, and saved resources could be applied to imaging and indexing the backlog of paper records.

Another factor is that by destroying these older records, those who believe that ATF has a firearms registry of owners and firearms might realize it does not and will have their fears assuaged.

ATF's Processing of Out-of-Business Records Has Not Created a Firearms Registry

Throughout my career overseeing the NTC and my retirement there are recurring contentions that ATF has created a registry of firearms owners which links them to the firearms they own. I know these fears are real but, based upon my experience and knowledge of tracing center operations, I know that there is no firearm registry at the NTC.

A true firearms registry would be like the registration of firearms under the National Firearms Act. I supervised the NFA Branch (now NFA Division) for 10 years. The NFA personnel maintain the National Registration and Transfer Record (NFRTR). ATF has records of every NFA firearm manufactured, imported, and transferred back to the beginning of the law in 1934. Every transfer and the name of every transferee is registered with ATF. Individual transferees are fingerprinted and photographed.

The current system, OBRIS, images paper out-or-business records as non-searchable flat image files in the Enterprise Content Management (ECM) system. Then the file is converted into formats searchable only by the identity of FFL. The original paper records are destroyed. For electronic records, files are converted into formats that can only be searched by the identity of the submitting FFL and serial numbers. One completed these formats are uploaded into the ECM.

These records are searched one trace at a time.

The NTC can only retain individuals' names and firearms on a limited basis as authorized by Congress. That retention would apply to the names of persons who acquired multiple handguns and who were reported by their FFL on ATF Form 3310.4, Report of the Sale or Other Transfer of Multiple Pistols or Revolvers. The names of the purchasers are retained for two years and then the name is deleted from the records. Another would be the person who acquired a firearm that was traced. Both name retentions are made in support of law enforcement investigations.

NTC personnel are and have been aware of the restrictions placed on out of business records at the NTC. These restrictions include: The Permanent ATF Appropriations Limitation of 2012 – This law states that "No funds appropriated herein or hereafter shall be available for salaries or administrative expenses in connection with consolidating or centralizing, within the Department of Justice, the records, or any portion thereof, of acquisition and disposition of firearms maintained by federal firearms licensees." This relates to a 1978 Carter Administration proposal that every FFL would submit is active firearms records to ATF quarterly. This ill-conceived proposal was quickly abandoned.

The Firearms Owners' Protection Act (FOPA) of 1986 states "No such rule or regulation prescribed after the date transferred to a facility owned, managed, or of the enactment of the Firearms Owners' Protection Act may require that records required to be maintained under this chapter or any portion of the contents of such records, be recorded at or controlled by the United States or any State or any political subdivision thereof, nor that any system of registration of firearms, firearms owners, or firearms transactions or dispositions be established".

Since ATF's collection of multiple handgun purchasers and the names of persons who purchased a firearm that is traced preceded the enactment of the FOPA, these collections do not violate FOPA, according to GAO audit 96-174 because ATF was collecting this information prior to the enactment of FOPA.

Listed below are the three GAO and the DOJ OIG audit numbers, along with their findings in quotes.

1. T-GGD-96-174 ATF Compliance Restrictions, from page 4:

"We determined that the Out-of-Business Records System and the Multiple Sales System, as designed, comply with the data restrictions. With regard to 18 U.S.C. 926(a), this restriction applies to certain rules or regulations issued after the effective date of the Firearms Owners' Protection Act that require the recording at or transferring of firearms licensee records to a government facility or the establishment of a registry of firearms, firearms owners, or firearms transactions or dispositions. At the same time it enacted the section 926(a) restriction, Congress codified the then-existing regulatory requirements that licensees forward out-of-business records and multiple sale reports to ATF. The current regulatory requirements concerning these records and reports do not violate section 926 because they predate the Firearms Owners' Protection Act and thus are not subject to section 926(a)."

2. T-GGD-96-104 Alcohol, Tobacco, and Firearms: Issues Related to Use of Force, Dealer Licensing, and Data Restrictions, from page 13:

"Furthermore, with regard to the operation of the Out-of-Business Records System, our review of ATF's system documentation and discussions with ATF officials, along with our observation of the out-of-business records process at NTC, basically confirmed that ATF was operating the system in a manner consistent with the way it was designed by ATF and described in Treasury's March 1995 letter. We found no evidence that ATF captures and stores the firearms purchasers' names or other identifying information from the out-of-business records in an automated file."

3. GAO 16-552 ATF Did Not Always Comply with the Appropriations Act Restriction and Should Better Adhere to Its Policies from pages 22-24; (The compliance issue dealt with some multiple handgun reports that contained the name of the buyer beyond the two-year retention period. The records were corrected.)

"OBRIS complies with the appropriations act restriction and adheres to policies designed to help ensure that the system is in compliance with the restriction. FFLs are specifically required to submit records to ATF when going out of business, and the system limits the accessibility of key firearms records information, such as retail purchaser data. As we reported in 1996, ATF first issued regulations in 1968 requiring FFLs that permanently go out of business to deliver their firearms transaction records to the federal government within 30 days.46 This provided a means of accessing the records for firearms tracing purposes after an FFL went out of business. The legislative history related to ATF's fiscal year 1979 appropriation did not provide any indication that Congress intended a change in ATF's existing practice. In 1986, the Firearms Owners' Protection Act (FOPA) codified this regulatory reporting requirement, affirming ATF's authority to collect this information. In 1996, we also reported that the predecessor to OBRIS—the Microfilm Retrieval System—as designed, complied with the statutory data restrictions and that ATF operated the system consistently with its design.48 We found that the Microfilm Retrieval System included in a computerized index the information necessary to assist ATF in completing a firearms trace, and did not aggregate information in a manner beyond that necessary to implement the Gun Control Act.49 Notably, ATF's system of microfilmed records did not capture and store certain key information, such as firearms purchaser information, in a searchable format.

In response to logistical challenges and technological advances, ATF developed OBRIS in 2006 as the repository to maintain digital images of out-of-business FFL records. ATF transitioned from using microfilm images of records to scanning records into OBRIS as digital images not searchable through character recognition, consistent with ATF's design and use of its prior Microfilm Retrieval System.50 It is our view that, like its microfilm predecessor system, OBRIS also complies with the appropriations act restriction because OBRIS's statutory basis and accessibility are essentially the same as the prior system.51 As with the prior system, OBRIS generally allows users to identify potentially relevant individual records through manual review by searching an index using an FFL number. Other information, specifically firearms purchaser information, remains stored in nonsearchable images, and is not accessible to ATF through a text search."

4. DOJ OIG 26-079 Audit of the Bureau of Alcohol, Tobacco, Firearms and Explosives Management of Firearms Trace Request at the National Tracing Center, from page 10

"Before scanning, contract workers remove staples, disassemble booklets, and discard irrelevant pages. A high-speed scanner captures non-searchable digital images for upload into the ECM image repository. The NTC performs image quality control (IQC) checks to verify that all images have been captured and are legible (no overlaps, folded pages, poor quality, etc.). After the IQC process is complete, the NTC destroys the original records. For electronic OBRs, the NTC converts the files into formats searchable only by the identity of the FFL and the firearm serial number characters and uploads them to ECM."

Conclusion

1. The ATF proposal to require FFLs to retain firearms records for 20 years, from the current permanent retention, is sound and reasonable. It returns the back to what was in force from 1985 – 2022. When I worked for ATF or as an ATF compliance consultant, I never anyone from any side of firearms issues complain that the 20-year period was too short.

2. The proposal to limit the retention of out-of-business records by the NTC to 20 years will reduce the total volume of records by over 33% and could provide more resources for current records processing. The proposal strikes a reasonable data-based benchmark away from those who would have a non-searchable archive of every firearm ever sold by every FFL who went out of business.

2. ATF's Out-of-Business Record Imaging System (OBRIS) complies with the Congressional data restrictions. prohibitions. I supervised the tracing center, and I know the employees were aware of the restrictions. More importantly, I believe this because there have been four audits of the NTC that reviewed the MRS or OBRIS system, all of which reported that ATF was following Congressional restriction on out-of-business records.