



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

Review of ATF's Actions in Revoking the Federal Firearms License of Guns & Ammo

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EXECUTIVE SUMMARY

In response to a congressional request, the Office of the Inspector General (OIG) examined whether the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) followed its administrative action policy throughout the revocation process in a case involving a Federal Firearm Licensee (FFL), Ralph Weaver doing business as Guns & Ammo.¹

ATF's administrative action policy in effect at the time of the Guns & Ammo case, the Federal Firearms Administrative Action Policy and Procedures (ATF Order 5370.1A, October 30, 2009), provided that an FFL's license could be revoked if the FFL had a history of similar, repeated violations. ATF inspected Guns & Ammo in November 2009 and found firearms violations that could have warranted a proposal of revocation pursuant to ATF policy.²

In his inspection report, however, the ATF Industry Operations Investigator (IOI) recommended an alternative to revocation that included a warning conference and future recall inspection. The IOI noted, among other things, that this was the licensee's first ATF inspection since April 1998, that the licensee's understanding of the *Gun Control Act of 1968* was wrong, and that a complete and detailed closing was conducted with the licensee instructing him on how to bring his firearm business up to date and in full compliance with the *Gun Control Act*.³

After reviewing the IOI's inspection report, an Area Supervisor and the Acting Director of Industry Operations (DIO) for the New Orleans Field Division concurred with the IOI's recommendation. On January 11, 2010, ATF held a warning conference with the FFL, and on January 21, 2010, ATF sent the FFL a follow-up letter regarding the warning conference. The letter summarized the violations and corrective action discussed at the warning conference and informed the FFL that further ATF inspections should be expected.

¹ We did not examine the merits of the revocation, which was the subject of pending litigation.

² The violations included transferring firearms for law enforcement agencies to individuals employed by law enforcement agencies without proper documentation; transferring handguns to individuals who resided in a state other than the state where the licensee's business is located; failing to properly record the disposition of firearms; and failing to contact the National Instant Criminal Background Check System (NICS) prior to transferring a firearm to a non-licensee.

³ The *Gun Control Act of 1968* was codified at 18 U.S.C. 44.

However, in February 2010, a second Acting DIO (who had just replaced the first Acting DIO) informed the Area Supervisor that she had reopened the case because the alternative to revocation had not been reviewed and approved by ATF's headquarters as required by ATF policy and because of her concern about the quantity of missing guns identified in the IOI's inspection report.⁴ The second Acting DIO determined that revocation was appropriate and made the recommendation to ATF headquarters. In making this recommendation, the second Acting DIO did not inform ATF headquarters that the first Acting DIO had decided, on the exact same set of facts, that an alternative to revocation was appropriate and that the New Orleans Field Division had already implemented the decision by holding a warning conference with the FFL.

The revocation recommendation was approved by ATF headquarters, but the New Orleans Field Division was instructed that upon receipt of the Hearing Officer's report, they were to confer with the sitting Deputy Assistant Director for Field Operations at ATF headquarters about possible alternative actions to revocation. On March 10, 2010, ATF sent the FFL an initial notice of revocation, and the FFL appealed the decision.

On July 28, 2010, the ATF Hearing Officer conducted a revocation hearing and submitted his report on August 23, 2010. Although the Hearing Officer concluded that ATF proved three of the four allegations in the notice of revocation, including willfulness of violations, he recommended that ATF not revoke the FFL's license. In his report, the Hearing Officer noted that the FFL's attorney had submitted information regarding other ATF administrative cases with egregious violations in which FFLs were given second chances by ATF and that Guns & Ammo was willing to do whatever it took to prevent future violations, including having entered into an agreement for the development and implementation of a compliance plan.

Despite this recommendation, on October 26, 2010, a third DIO in the New Orleans Field Division issued a final notice of revocation. We found no evidence that the third DIO complied with the prior instruction from ATF headquarters that the field division consider alternatives to revocation after receipt of the Hearing Officer's recommendation. We also were unable to determine why the third DIO rejected the Hearing Officer's recommendation and proceeded with revocation.

⁴ The IOI's inspection report in December 2009 noted that 210 firearms were missing from the FFL's inventory. Subsequent to the November 2009 inspection, the licensee presented documents indicating it found 115 out of the 210 missing firearms, leaving 95 still unaccounted for.

We concluded that the New Orleans Field Division did not comply with ATF's administrative action policy in the Guns & Ammo case and did not follow instructions it received from ATF headquarters. As a result, ATF supervisors imposed substantially different discipline on the FFL based on an identical set of facts. As an initial matter, we found that the first Acting DIO did not comply with ATF's policy by failing to seek ATF headquarters' review and approval of his decision to proceed with an alternative to revocation. We also found that, after holding the warning conference, the field division did not schedule a recall inspection of Guns & Ammo, as its 2009 policy required. We further determined that the second Acting DIO, in obtaining the approval of ATF headquarters for her revocation recommendation, failed to inform headquarters of the fact that the prior Acting DIO had determined that an alternative to revocation was the appropriate outcome and that the field division had already held a warning conference with the FFL. Finally, we concluded that the third DIO, after receiving the Hearing Officer's recommendation against revocation, failed to follow an earlier instruction from headquarters that the field division consider alternatives to revocation upon receipt of the Hearing Officer's report.

We also found that this case highlighted the problems that can result from the delays in ATF's inspection process, which we addressed in a recent report.⁵ One of the main reasons cited by the IOI and relied upon by the first Acting DIO in deciding to impose an alternative to revocation was the fact the FFL had not been inspected in over 11 years. We also were concerned that, as a result of the varying issues we identified in the handling of this case, ATF was required to expend considerable resources adjudicating this matter, thereby diverting inspection staff from its other priorities. Finally, we were troubled by the burden placed on Guns & Ammo in having to address duplicative administrative decisions during a single administrative action.

To avoid the issues identified in our review, we made five recommendations to ATF to ensure that it provides greater oversight and training regarding administrative action cases.

⁵ The OIG report, *Review of ATF's Federal Firearms Licensee Inspection Program*, I-2013-005 (April 2013), reported that ATF was understaffed and unable to meet its goal of conducting cyclical compliance inspections of FFLs.

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INTRODUCTION

In response to a congressional request, the Office of the Inspector General (OIG) examined whether the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) followed its administrative action policy throughout the revocation process in a case involving a Mississippi-based Federal Firearm Licensee (FFL).

ATF Administrative Action Policy

ATF enforces federal firearms laws, in part, by issuing firearms licenses and overseeing a program that conducts regulatory inspections of FFLs to ensure that only qualified individuals receive licenses to sell guns, to educate FFLs about federal firearms laws, and to increase compliance with those laws to prevent the transfer of firearms to those prohibited from having them. If ATF finds violations during a compliance inspection of an FFL, it can issue a report of violations or, based on the severity and frequency of the violations, recommend administrative action.

In October 2009, ATF revised its administrative action policy, entitled Federal Firearms Administrative Action Policy and Procedures.⁶ The order implementing the 2009 revised policy superseded a 2007 adverse action policy and memorandum.⁷ ATF's 2009 policy required that some administrative actions against FFLs be resolved at the headquarters level rather than at the field division level. It instructed Directors of Industry Operations (DIO) in the field divisions to submit to ATF headquarters Significant Information Reports (SIR) outlining inspection findings and any proposed resolution prior to initiating any actions against FFLs for revocation or denial, *or* an alternative to these actions. The Deputy Assistant Director (DAD) for Field Operations at ATF headquarters then reviewed the recommendations to determine whether actions should proceed within the division or at headquarters, the latter being required when the case was highly complex or sensitive,

⁶ ATF Order 5370.1A, Federal Firearms Administrative Action Policy and Procedures, October 30, 2009, Section 7c. In February 2013, ATF finalized ATF Order 5370.1B (February 8, 2013), which is a new version of the Federal Firearms Administrative Action Policy and Procedures. However, we did not review or consider the new policy since it was not the administrative action policy in effect during the license revocation of Guns & Ammo.

⁷ ATF changed the term "adverse actions" to "administrative actions" in the 2009 policy.

or if the violations took place in several field divisions. The 2009 policy expressly stated that the DIO was required to wait for the DAD's determination prior to proceeding with any actions. This 2009 policy was a change from ATF's 2007 memorandum, which advised ATF field divisions that "current firearms and explosive policies generally do not require headquarters approval for an alternate recommendation such as a warning conference in lieu of revocation."

ATF's 2009 policy also provided that while DIOs had discretion to make recommendations for administrative actions that could proceed within the division, the DAD at ATF headquarters still was required to review and approve the recommendations and ensure that ATF's administrative action policy was applied consistently. ATF's administrative action policy further stated that a recall inspection was required whenever a warning conference was held with an FFL.

Chronology of the Guns & Ammo Case

Guns & Ammo, a Federal Firearms Licensee operated by Ralph Weaver, received its first compliance inspection in September 1993 by an Industry Operations Investigator (IOI) from ATF's New Orleans Field Division. This inspection resulted in a report of violations, and the IOI recommended that ATF conduct annual inspections of Guns & Ammo beginning in 1994. However, the next inspection did not occur until April 1998, when an IOI returned for another inspection and similarly issued a report of violations. Table 1 presents the Code of Federal Regulations violations found by the IOIs in 1993, 1998, and in a subsequent inspection in 2009.

**Table 1: C.F.R. Violations Found During Compliance Inspections
in 1993, 1998, and 2009**

1993 INSPECTION	1998 INSPECTION	2009 INSPECTION
27 C.F.R. 178.124(c): ATF Form 4473 errors and omissions.	27 C.F.R. 178.124(c): ATF Form 4473 errors and omissions.	27 C.F.R. 478.124(a):* Failure to obtain properly completed ATF Form 4473s prior to transfer of firearms to non-licensed person.
27 C.F.R. 178.99(b): Sold rifle to underage person.		27 C.F.R. 478.99(a): Prohibited firearms transfer.
22 C.F.R. 178.100: Sold firearms at gun shows other than Mississippi.		
	27 C.F.R. 178.125(e): Discrepancies between record and physical inventory.	27 C.F.R. 478.125(e): Failure to properly maintain Acquisition & Disposition book.
	27 C.F.R. 178.126(a): Unreported multiple handgun sales.	
	27 C.F.R. 178.132: Sale of a post-ban 100 round magazine.	
		27 C.F.R. 478.102(a): Failure to conduct background check prior to the transfer of firearms to non-licensed person.

* Part 178, Commerce in Firearms and Ammunition, became Part 478 when the Code of Federal Regulations was reorganized to reflect ATF's transfer from the Department of the Treasury to the Department of Justice under the Homeland Security Act of 2002. (See <https://www.federalregister.gov/articles/2003/01/24/03-1657/reorganization-of-title-27-code-of-federal-regulations>.)

Source: ATF Inspection Reports from 1993, 1998, and 2009.

The IOI's reports in both the 1993 and 1998 inspections did not recommend further action and noted that the "records are in generally good shape." Additionally, in the 1998 inspection, the IOI's report stated that with the exception of one improper sale, the violations found were "routine, especially considering the licensee's volume of business." After Hurricane Katrina, ATF contacted Mr. Weaver by telephone in September

2005 to inquire about the business status of Guns & Ammo, and Mr. Weaver told ATF that he had his full inventory and had not lost any records.⁸

ATF conducted its next compliance inspection in November 2009, more than 11 years after the previous inspection.⁹ This inspection occurred after the implementation of the revised administrative action policy in October 2009 described above. As shown in Table 1 above, the IOI found violations and issued a report of violations on December 1, 2009. According to the IOI's 2009 inspection report, the FFL had the following violations:

- In 7 instances, the licensee transferred firearms for law enforcement agencies to individuals employed by law enforcement agencies without proper letters from the department or completing ATF Form 4473.
- In 6 instances, the licensee transferred handguns to individuals who resided in a state other than the state where the licensee's business is located.
- The licensee failed to properly record the disposition of 210 firearms and the firearms were reported missing as a result of the inspection.¹⁰
- In 11 instances, the licensee failed to contact NICS [National Instant Criminal Background Check System] prior to transferring a firearm to a non-licensee.¹¹ In 10 of those instances, the licensee transferred firearms to police officers without obtaining a certification letter.

⁸ ATF's Katrina Outreach Program in 2005 instructed staff to contact every FFL that might have been affected by Hurricane Katrina and inquire as to the FFL's business status.

⁹ The Office of the Inspector General recently issued a report finding that ATF failed to meet its goal of conducting cyclical compliance inspections of FFLs within 5 years in over 58 percent of cases between fiscal year (FY) 2007 and FY 2012. See U.S. Department of Justice Office of the Inspector General, *Review of ATF's Federal Firearms Licensee Inspections Program*, Evaluation and Inspections Report I-2013-005 (April 2013).

¹⁰ In the ATF Hearing Officer report, dated August 23, 2010, the Hearing Officer noted that subsequent to a firearms license revocation hearing, the licensee presented documents indicating it found 115 out of the 210 missing firearms, leaving 95 still unaccounted for.

¹¹ The *Brady Handgun Violence Prevention Act of 1993* requires FFLs to contact the Federal Bureau of Investigation (FBI) or a state agency (if applicable) to request that NICS be queried to confirm that potential customers are not prohibited from purchasing firearms. See 18 U.S.C. § 922(s).

While these violations could have warranted a proposal for revocation under ATF policy, on December 2, 2009, the IOI prepared a memorandum for the Area Supervisor and the DIO that recommended an alternative to license revocation. Specifically, the IOI recommended a warning conference with the FFL to be followed by a recall inspection. The IOI's justification for an alternative to revocation was predicated on the following six reasons:

- The licensee's understanding of the Gun Control Act was wrong in that he thought active duty military personnel were residents of the state of Mississippi if they were stationed in Mississippi for at least 90 days.
- The licensee was a Glock Law Enforcement dealer and had sold several firearms over the years to law enforcement officers employed by the Mississippi Forestry Commission. The Licensee mistakenly accepted a Mississippi Forestry Commission Fireman's letter as a law enforcement letter.
- The licensee accepted responsibility for allowing part time employees to record dispositions in the Acquisition and Disposition books, but felt he was not missing any firearms and only receipts and paperwork of firearms transferred to law enforcement departments and others. The licensee stated his business was not flooded by Hurricane Katrina and none of his records were lost or destroyed, but his building was heavily damaged which resulted with his records being boxed up and stored for safety while his building was repaired. The licensee stated his records were not fully back in working order.
- This was the first inspection of the licensee since an April 3, 1998 inspection. The 1998 inspection resulted in four violations being cited; and a recommendation of no further field action.
- A very complete and detailed closing was conducted with the licensee as well as instructions all during the inspection to bring the Licensee's firearm business up to date and in full compliance with the Gun Control Act.
- A warning conference could serve as proof of willfulness should any repeat violations be found during the recall or any other future inspections.

Documents show that on January 4, 2010, the initial Acting DIO of the New Orleans Field Division concurred with the Area Supervisor and the IOI that a warning conference and subsequent recall inspection were appropriate rather than revocation. On January 11, 2010, ATF held a warning conference with the FFL and, on January 21, 2010, ATF sent the FFL a follow-up letter regarding the warning conference. The letter summarized the violations and corrective action discussed at the warning conference and informed the FFL that further ATF inspections should be expected. The corrective actions recommended by ATF related to conducting proper inventories and maintaining accurate

recordkeeping. The letter also warned the FFL that future violations could be viewed as willful and might result in license revocation. The initial Acting DIO was transferred to ATF Headquarters and became Acting DAD for Field Operations (FO) in March 2010.

In March 2010, the second Acting DIO for the New Orleans Field Division (who had replaced the initial Acting DIO), reviewed the Guns & Ammo case and sent a recommendation for revocation to the Acting DAD for FO (the former initial Acting DIO from the New Orleans Field Division). Despite his prior recommendation for alternative action, the Acting DAD for FO concurred with the second Acting DIO's recommendation for revocation. As a result, on March 10, 2010, the second Acting DIO issued the FFL an initial notice of license revocation, and Guns & Ammo appealed the revocation shortly thereafter.

On July 28, 2010, an ATF Hearing Officer conducted a revocation hearing. On August 23, 2010, the Hearing Officer issued a report recommending that ATF not revoke Guns & Ammo's FFL license. However, a new DIO for the New Orleans Field Division, who had assumed that position in April 2010, disagreed with the Hearing Officer's recommendation and sent Guns & Ammo a final notice of revocation dated October 26, 2010.¹² Thereafter, Guns & Ammo sought judicial review of ATF's actions.¹³

Scope and Methodology

For this review, we examined ATF policies regarding federal firearms license revocations, the inspection history for Guns & Ammo, and the administrative history of the case. We also examined e-mails between ATF employees involved in this case from 2009 through 2010. In addition, we conducted interviews with the Area Supervisor and the three Directors of Industry Operations involved in the Guns & Ammo license revocation.

¹² ATF's firearms license hearing policy provides DIOs with the discretion to make the final decision on revocation after reviewing the Hearing Officer recommendation. ATF Order 5374.1, Firearms License Hearings, May 21, 2007, Section 9h.

¹³ After that final notice of revocation, Guns & Ammo filed suit on December 16, 2010, in the U.S. District Court for the Southern District of Mississippi. The court granted summary judgment for ATF on March 12, 2012, and on March 16, 2012, the FFL appealed to the U.S. Court of Appeals for the Fifth Circuit. On August 22, 2012, the Fifth Circuit affirmed the judgment for ATF. Guns & Ammo sought review in the United States Supreme Court by petition for writ of *certiorari* filed January 28, 2013, and the petition was denied on March 18, 2013.

RESULTS OF THE REVIEW

The OIG found that ATF did not comply with its administrative action policy regarding FFL administrative actions in the Guns & Ammo case. First, the initial Acting DIO in the New Orleans Field Division did not follow ATF's administrative action policy in effect at the time, which resulted in the New Orleans Field Division holding a warning conference with Guns & Ammo without first obtaining approval from ATF headquarters. Second, we found no evidence that ATF scheduled a recall inspection for Guns & Ammo following the warning conference as the policy required.

We also determined that the second Acting DIO's actions in reopening the Guns & Ammo case and issuing an initial notice of revocation, though not common practice, were within her discretion. In addition, we found that a third DIO's disagreement with the Hearing Officer's recommendation to not revoke the Guns & Ammo license, while also not common, was within his discretion pursuant to ATF's written policy. We discuss our findings in more detail below.

The initial Acting DIO in the New Orleans Field Division did not follow the administrative action policy in effect at the time.

ATF's 2009 administrative action policy required DIOs to submit to ATF headquarters for review all recommendations for a warning conference as an alternative to revocation. ATF's policy explicitly stated that the DIO "shall submit to the DAD a Significant Information Report [SIR] containing a synopsis of findings and proposed resolution prior to initiating any action for revocation or denial, or an alternative to these actions, suspension or fine." The initial Acting DIO told the OIG that he had reviewed the Guns & Ammo inspection report and concurred with the IOI's and Area Supervisor's proposal for an alternative to revocation consisting of a warning conference, a warning letter, and a recall inspection. However, the initial Acting DIO did not submit this recommendation to ATF headquarters. He told us that he did not do so because he believed that recommendations for a warning conference or a warning letter did not require headquarters review and could be handled at the division level.

The initial Acting DIO told the OIG that he was not aware that the 2009 policy had changed the review process. He told us he was aware that the 2009 policy became effective in October 2009, but he said he did not recall any significant policy changes from prior versions. He stated that he continued to believe, over 3 years later, that only

recommendations for revocation are required to be submitted to headquarters for review.¹⁴

However, other supervisors in the New Orleans Field Division were aware of the 2009 policy change. In a February 17, 2010, e-mail exchange between the Area Supervisor and a senior operations officer, the Area Supervisor said she was not aware that the initial Acting DIO had failed to send the Guns & Ammo case to headquarters for review. The Area Supervisor wrote, “I’ve already conducted the warning conference on this . . . I had no idea he [the initial Acting DIO] had not sent it to HQ.”¹⁵

We found no evidence that a recall inspection was scheduled following the warning conference as ATF policy required.

ATF’s 2009 administrative action policy required an Area Supervisor to order a recall inspection after a warning conference was undertaken with an FFL.¹⁶ The warning conference for Guns & Ammo was held on January 11, 2010. Following the warning conference, ATF sent a letter to Guns & Ammo stating, among other things: “You may anticipate further inspections to ensure your compliance.” According to the Area Supervisor, pursuant to ATF policy, she should have closed the case in N-Spect and generated a later date for a recall inspection.¹⁷ She told the OIG that she could not specifically recall whether she closed the case, and said she could not remember if she scheduled a recall inspection.¹⁸ As discussed below, while it appears based on our review of

¹⁴ As noted previously, the 2007 policy did not require the DIOs to consult with the DAD regarding alternative administrative actions such as a warning conference in lieu of revocation. However, that was changed by the 2009 policy, which stated in relevant part: “[T]he DIO shall submit to the DAD a SIR containing a synopsis of findings and proposed resolution prior to initiating any action for revocation or denial, or an alternative to these actions, suspension or fine.”

¹⁵ It is unclear how the Area Supervisor learned that the case was not sent to ATF headquarters.

¹⁶ ATF Order 5370.1A, Federal Firearms Administrative Action Policy and Procedures, October 30, 2009.

¹⁷ N-Spect is a database system that ATF uses to track and manage firearms and explosives inspections. The Area Supervisor told us that the New Orleans Field Division used a system that allowed her to schedule recall inspections in N-Spect.

¹⁸ ATF’s Industry Operations Handbook, ATF H 5030.2C, February 2008, informs ATF employees that the appropriate fields in N-Spect must be completed as part of the closing actions in an inspection.

e-mails that the Guns & Ammo case was closed by the field division, we found no evidence that a recall inspection was scheduled after the Guns & Ammo warning conference, as the administrative action policy required.

The initial Acting DIO told us that recall inspections were handled by the Area Supervisor and that “it is the Area Supervisor’s responsibility to stage the recall in N-Spect.” Additionally, when we asked him if anyone in the field division had scheduled a recall inspection for Guns & Ammo, he replied, “I know nothing about that.”

Based on the documentation ATF provided, we did not find any evidence that a recall inspection was ever scheduled or conducted with Guns & Ammo following the November 2009 compliance inspection or prior to the final notice of revocation in October 2010.¹⁹

The Guns & Ammo case was reopened by a different Acting DIO 1 month after the warning conference was held.

In February 2010, the second Acting DIO, who had just replaced the initial Acting DIO for the New Orleans Field Division, reopened the Guns & Ammo case and issued an initial notice of revocation. This occurred 2 months after the initial Acting DIO had concurred, on January 4, 2010, with the recommendation for an alternative remedy and a warning conference was held on January 11, 2010. In an e-mail dated February 12, 2010, the second Acting DIO acknowledged that the case was closed and wrote that she was “re-opening” it based on the nature of the violations cited within the inspection report. In a follow-up e-mail to the Division Counsel and the Area Supervisor on February 18, 2010, the second Acting DIO further noted: “That we’ve already held a warning conference with the FFL doesn’t preclude us from proceeding with a revocation. This file was not run through the proper channels (not either of your faults), but with 210 missing firearms, there’s no way I can recommend an alternate in good conscience.” Although DIOs have the discretion under ATF policy to upgrade or downgrade administrative action recommendations for FFLs, ATF staff we interviewed for this review told us that it was not ATF’s practice to reopen a case after a DIO had recommended an administrative action, such as a warning conference, and when that action had already been carried out.

¹⁹ While the Area Supervisor did not schedule a recall inspection after the warning conference, ATF could still have conducted a recall inspection 1 year after the November 2009 compliance inspection, or sooner with the FFL’s permission, but it did not do so. See 18 U.S.C. 923(g)(1)(A) and (B).

During our interview with the second Acting DIO, she said she considered the Guns & Ammo case to still be open, despite the statement in her February 12 e-mail, because she did not see any administrative action recommendation listed in N-Spect. When we asked her what her current field division, ATF's Dallas Field Division, does when a warning conference is held with an FFL, she told us that the division schedules a recall inspection after the conference. Based on her response, we asked her why she issued an initial notice of revocation rather than instruct the New Orleans Field Division staff to schedule a recall inspection for Guns & Ammo. She told us that the violations were serious enough to warrant a revocation and that the initial Acting DIO had not received headquarters approval for the alternative action, as ATF's 2009 policy required.²⁰ She also told us that "it is not a normal practice" to reopen a case that had been closed, but she said she was "aware of it being done before." However, she could not provide us with an example of such a case, and ATF has not been able to provide us with any examples of similar cases in N-Spect.

A third DIO, who was one of the Area Supervisors in the New Orleans Field Division when the warning conference was held in January 2010, became the DIO for the New Orleans Field Division in April 2010, following the second Acting DIO's return to the Dallas Field Division. He told us that it was "highly unusual" that the second Acting DIO re-opened the case shortly after the warning conference was held and that he had never done so in other cases. In an e-mail dated February 17, 2010, to the Area Supervisor who handled the Guns & Ammo matter, the third DIO (himself an Area Supervisor at the time) advised the other Area Supervisor, "You need to call her [the second Acting DIO] and let her know you held the warning conference as per DIO [the initial Acting DIO]. . . and discuss it with her. . . . If you are satisfied the licensee will be in compliance after your last conference, then you should tell her that."

The second Acting DIO failed to inform ATF headquarters that a warning conference had already been held with the FFL.

We found that the second Acting DIO sent an incomplete SIR to ATF headquarters for review to support her revocation recommendation for Guns & Ammo. The SIR that she sent to ATF headquarters on March 3, 2010, failed to inform headquarters that a warning conference

²⁰ The second Acting DIO told us that nothing was entered into N-Spect to suggest that a warning conference had been held. However, her February 18, 2010, e-mail, referenced above, suggests that she knew at the time that a warning conference had been held even if a record had not been entered into N-Spect.

already had been held with Guns & Ammo.²¹ ATF Order 5370.1A required DIOs, in addition to describing the FFL's compliance history, to submit a SIR to the DAD at ATF headquarters that contained a synopsis of findings and proposed resolution. The sample SIR included in ATF's policy as a reference for the field showed that a SIR should contain the compliance history and administrative actions, such as warning letters and warning conferences, taken against a licensee. That did not happen in this instance.

Additionally, although Division Counsel knew that ATF already had held a warning conference with the FFL, she failed to inform the Associate Chief Counsel at ATF headquarters of this fact when the Division Counsel e-mailed the Associate Chief Counsel on February 23, 2010, and requested review of the Guns & Ammo notice of revocation. Moreover, the Division Counsel's e-mail did not include the concerns raised by the Area Supervisor in proceeding with a revocation.²² The Associate Chief Counsel responded to the Division Counsel in an e-mail on February 25, 2010, and said, "This looks good."

Deficiencies were found with ATF headquarters review of the Guns & Ammo case.

The ATF policy review board, consisting of the DAD for FO at ATF headquarters and the ATF Deputy Chief Counsel, reviews cases involving an administrative action. The second Acting DIO sent the SIR on Guns & Ammo to the DAD for FO for review in March 2010, as required by the administrative action policy. At the time, the policy review board included the Acting DAD for FO, who had recently served as the initial Acting DIO for New Orleans.

We found two deficiencies with the ATF headquarters review process for the Guns & Ammo administrative action. First, we do not believe that the initial Acting DIO involved in the Guns & Ammo 2009 inspection and who had agreed (without consulting with ATF headquarters as required by ATF's 2009 policy) that a warning

²¹ See Appendix I for a copy of the SIR.

²² In its response to our draft report, ATF told us that there were oral conversations between the Division Counsel and the Associate Chief Counsel regarding the earlier warning conference. In light of this representation, we are concerned that there appears to have been no effort by ATF headquarters to inquire about the initial Acting DIO's failure to follow ATF policy. The initial Acting DIO told the OIG that no one at ATF had informed him during this time period that authorizing the warning conference in lieu of revocation, without ATF headquarters approval, violated ATF's administrative action policy.

conference was an appropriate alternative to revocation, should have participated in considering a request by the second Acting DIO for New Orleans to reopen the decision that he had made just 2 months earlier. In his new position as Acting DAD for FO, he agreed with the second Acting DIO's recommendation to move forward with a revocation proceeding against Guns & Ammo. Yet, in an e-mail dated March 10, 2010, the Acting DAD for FO did not appear to be convinced that revocation was the appropriate outcome and instructed the second Acting DIO and an Area Supervisor, who eventually became the third DIO in the New Orleans Field Division:

Post revocation hearing, and upon receipt of the hearing officer's results, please confer with the sitting DAD for possible alternate actions because data regarding out of state transfers, weren't clear if any were to prohibited persons. Given the expiration of 11 years between inspections, there might be the slightest of possibility this licensee could be remediated into compliance.

We asked the Acting DAD for FO why he changed his position on the administrative action for Guns & Ammo from a warning conference when he was the initial Acting DIO in January 2010 to revocation while he was at ATF headquarters in March 2010. He told the OIG that he did not make the connection from reviewing the SIR that the second Acting DIO had submitted to him. He said he could not tell from the SIR that the FFL was the same one whose conduct he had reviewed 2 months earlier while serving as the initial Acting DIO for the New Orleans Field Division. He said that had he made the connection, he may have decided that his original decision supporting a warning conference was the appropriate outcome.

The second deficiency we found resulted from the failure of the SIR that had been submitted by the second Acting DIO to reference the warning conference that already had been held with the licensee. We found that this failure may have had an impact on the decision made by ATF headquarters to support the revocation recommendation. The initial Acting DIO, while serving as the Acting DAD for FO, told us that if the SIR had made "any mention of a warning conference, I might have put the connection together" between the second Acting DIO's SIR and his prior involvement in the matter. Moreover, we believe that any reviewer at headquarters would want to know when considering a proposed revocation action that a different DIO had previously determined that an alternative to revocation was appropriate and that the alternative action had already been implemented.

It is unclear whether ATF followed the Acting DAD for Field Operations' instructions after receiving the Hearing Officer's report.

As noted above, while the ATF policy review board supported the second Acting DIO's recommendation to proceed with revocation, the Acting DAD for FO instructed the second Acting DIO and the third DIO (at the time an Area Supervisor) that, upon receipt of the Hearing Officer's report, they were to confer with the sitting DAD for possible alternative actions to revocation. Based on our review of the file, it is unclear whether ATF considered or discussed alternative administrative actions after the Hearing Officer's report was received.

The Guns & Ammo revocation hearing was held on July 28, 2010. In an August 23, 2010 report to ATF, the Hearing Officer did not recommend revocation. Specifically the Hearing Officer's recommendation stated:

Analysis of the facts in this hearing shows that the Government proved three of the four allegations in the Notice of Revocation. The Government also proved willfulness of violations in those Allegations. In view of all of the factors presented during and after the hearing, I recommend that the Federal Firearms License of Ralph Paul Weaver, Jr., d/b/a Guns & Ammo, not be revoked.²³

The Hearing Officer concluded in his report that:

The Government presented witness testimony and evidence in various exhibits that prove Ralph Paul Weaver, Jr. d/b/a Guns & Ammo violated provisions of the *Gun Control Act*. No evidence was presented that ATF conducted a license application inspection of Guns & Ammo where the requirements for the conduct of a firearms business and the recordkeeping requirements are explained to the applicant. The record reflects that the licensee had two inspections previous to the last inspection in 2009, and that Mr. Weaver attended three licensee seminars. Given the background the licensee has knowledge of the laws and regulations for the conduct of business as a dealer in firearms. The Government's Attorney entered into the record the standard of willfulness applicable in the Fifth Circuit. His failure to comply constitutes willfulness.

The licensee's attorney entered several Federal Court cases into the record to show legally and factually ATF's actions in other revocation proceedings and how the courts have ruled with respect to willfulness. He noted several instances of more egregious violations than the instant case where a licensee was given a second chance. He presented a case in

²³ ATF Hearing Officer, memorandum to Director of Industry Operations, New Orleans Field Division, Report of Hearing on the Notice of Revocation of License Ralph Paul Weaver, Jr. d/b/a Guns & Ammo, August 23, 2010.

which a firearms license was not revoked until after four inspections with increasing violations and two warning conferences. He presented cases where the court held that although violations occurred, there was conscious efforts to comply therefore the violations were not willful. The licensee has entered into an agreement with his Attorney's company, FFL Guard, for the development and implementation of a compliance plan for Guns & Ammo going forward. The licensee stated that he is willing to do whatever it takes to prevent future violations and he would like to retain his firearms license.²⁴

Despite the recommendation made by the Hearing Officer, the third DIO issued a final notice of revocation on October 26, 2010.²⁵ When we asked the third DIO why he made the decision to revoke, he told us that "the DIO has [the] discretion [to make the final decision], all the Hearing Officer does is make a recommendation. The DIO reviews the transcript and hearing tape and makes his own decision."²⁶ We found no written documentation that explained why the third DIO disagreed with the Hearing Officer's recommendation. Given the detailed recommendation provided by the Hearing Officer, we believe that when ATF officials disagree with a Hearing Officer they should formally document the reasons for their decision to reject the recommendation.

When we asked the third DIO about his review of the case, he said that he was "not initially given any background information on it" and that he "looked at it independently and made [the] decision accordingly." However, the e-mails we reviewed showed that the third DIO had knowledge of the Guns & Ammo case prior to his consideration of the Hearing Officer's decision. For example, in addition to the March 10, 2010, e-mail described above, other e-mails dating back to February 2010 showed that the third DIO was aware of the case and the concerns in the New Orleans Field Division about revoking the Guns & Ammo license. In particular, as mentioned earlier, on February 17, 2010, the third DIO told the Area Supervisor, who had handled the case, that she should inform the second Acting DIO that the initial Acting DIO had approved the warning conference and that it had already been held with the FFL.

²⁴ ATF Hearing Officer, memorandum to Director of Industry Operations.

²⁵ Three DIOs, in addition to the Chief and Deputy Chief of the Field Management Staff at ATF headquarters, told us that the DIO usually agrees with the Hearing Officer's recommendation.

²⁶ According to ATF's Firearms License Hearings order (ATF Order 5374.1), after reviewing a Hearing Officer's recommendation, the DIO makes a final decision regarding the matter and notifies the licensee of the decision in writing.

We also asked the third DIO why he pursued the revocation when ATF had not scheduled a recall inspection after the warning conference and why he did not wait for the recall inspection before deciding to proceed with revocation. He told us that he had instructed his staff to “go out a second time to conduct another inspection.” However, we found no evidence demonstrating that he had instructed his staff to conduct another inspection or that any further inspection had been undertaken prior to the final revocation in October 2010.²⁷

Additionally, he told us that the DAD for Field Operations at the time of the Hearing Officer’s decision gave him the go-ahead to revoke the license.²⁸ However, it was unclear whether he or anyone else at ATF had informed the then-DAD for FO about the Acting DAD’s earlier instructions to confer with the sitting DAD after receiving the Hearing Officer’s report for possible alternative actions. Further, ATF did not provide us any documentation regarding the final headquarters approval for revocation and we did not locate any during our review.²⁹

²⁷ ATF provided us with an inspection report on Guns & Ammo that was dated from 2011. This inspection was unsigned, and ATF counsel stated that it was not used as the basis for the Guns & Ammo revocation.

²⁸ The DAD for FO at the time of the Hearing Officer’s report was different than the Acting DAD for FO in March 2010 who instructed the second and third DIO (an Area Supervisor at the time) to consult with the sitting DAD about possible alternative actions to revocation after receiving the Hearing Officer report.

²⁹ We did not interview the DAD for FO during this time period because he has retired from ATF.

CONCLUSIONS AND RECOMMENDATIONS

We conclude that ATF did not comply with its administrative action policy in handling this matter. The initial Acting DIO did not comply with the administrative action policy in effect at the time, which required consultation with ATF headquarters before proceeding with any alternative recommendation for revocation. We also found no evidence that a recall inspection was scheduled for Guns & Ammo as the administrative action policy required.

Further, we determined that the second Acting DIO's actions in reopening the Guns & Ammo case and issuing an initial notice of revocation, while not ATF's common practice, were within her discretion. Similarly, we determined that it was uncommon, but within his discretion, for the third DIO to issue the final revocation notice to Guns & Ammo after the Hearing Officer's recommendation to not revoke the license.

The rapid succession of ATF's DIOs in the New Orleans Field Division and a failure to comply with ATF's administrative action policy resulted in differing decisions by ATF officials concerning the exact same set of facts regarding an FFL's violations. The initial Acting DIO who handled the matter determined that only a warning was appropriate, and the FFL attended an ATF warning conference as a result of the DIO's decision. However, when a second Acting DIO (who had replaced the initial Acting DIO) re-opened the case just 2 months later, she decided that the same facts warranted revocation of the FFL's license. When the ATF Hearing Officer disagreed with the second Acting DIO and recommended against revocation, a third DIO (who had replaced the second Acting DIO) rejected the Hearing Officer's recommendation and ordered a revocation of the FFL's license. In addition, it was unclear whether the third DIO followed the Acting DAD for FO's instructions in March 2010 to confer with the sitting DAD for possible alternative actions to revocation after receiving the Hearing Officer's report.

We are concerned that ATF failed to follow its own procedures in certain aspects of this matter. We also are concerned about the failure by ATF to fully document certain decisions in this matter, which at least partially was the cause of the duplicative reviews that the New Orleans Field Division undertook in this single administrative action. Additionally, we have concerns about the adequacy of information submitted by the field division to ATF headquarters.

Further, we note that the failure to comply with ATF's administrative action policy at the outset led to an FFL first being told by one DIO that he was receiving only a warning conference and then subsequently being told that his license was being revoked by another DIO. We were also troubled by the overall burden placed on Guns & Ammo because of the duplicative administrative decisions during a single administrative action. Similarly, we are concerned by the burden placed on ATF during this administrative action because ATF invested significant resources, diverting inspection staff from their other priorities.³⁰

To help avoid the issues identified in our review, ATF should ensure that all DIOs are informed and knowledgeable of the most recent administrative action policy and the requirement that all recommendations for administrative action, including recommendations for a warning conference in lieu of revocation, must receive ATF headquarters approval. In addition, ATF should ensure that field divisions are appropriately trained on the handling of administrative actions.

In this case, we found that the SIR that was sent by the second Acting DIO to ATF headquarters failed to mention that a warning conference had recently been held with the FFL. To address this issue, ATF could require DIOs to submit SIRs to headquarters that have been certified or signed by the DIO or the Division Counsel to ensure that all available case information and interactions with the FFL are noted on SIRs. Additionally, ATF should consider instituting a series of spot checks of active cases to ensure that field divisions remain in compliance with current ATF policy and procedures.

To help avoid the issues identified in our review, we recommend that ATF:

1. Ensure that all DIOs are informed and knowledgeable of the most recent administrative action policy and the requirements it contains.
2. Ensure that field divisions are appropriately trained on the handling of administrative actions.

³⁰ The OIG report, *Review of ATF's Federal Firearms Licensee Inspection Program*, I-2013-005 (April 2013), reported that ATF was understaffed and unable to meet its goal of conducting cyclical compliance inspections of FFLs.

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3. Require DIOs to submit SIRs to headquarters that have been certified or signed by the DIO or the Division Counsel to ensure that all available case information and interactions with the FFL are noted on SIRs.
 4. Require DIOs to document and justify the reasons for their final decisions in instances where their decision differs from a Hearing Officer's recommendation.
 5. Consider instituting a series of spot checks of active cases to ensure that field divisions remain in compliance with current ATF policy and procedures.

**APPENDIX I: SIR REPORT SENT BY THE SECOND ACTING DIO TO
ATF HEADQUARTERS ON MARCH 3, 2010**

Ralph Paul Weaver dba Guns and Ammo (1-64-33717)

Compliance History

April 3, 1998 Inspection

- Violation of 27 CFR 178.124(c) (Violations of sections A & B form 4473)
- Violation of 27 CFR 125(e) (A&D violations)
- Violation of 27 CFR 178.126a (Multi-hand gun sales violation)
- Violation of 27 CFR 178.132 (Sale of post-ban 100 round magazine)
- Recommendation of no further field action.

Basis for Revocation:

November 2009 Inspection (November 2008 through November 2009)

- Failure to properly record the disposition of firearms in 210 instances (the firearms were reported missing as a result of the inspection).
- The licensee transferred handguns to individuals who resided in a state other than the state where the licensee's business is located in 6 instances.
- Failure to contact NICS prior to transferring a firearm to a non-licensee on 11 occasions. On ten of those occasions, the licensee transferred firearms to police officers without obtaining a certification letter.
- Failure to obtain a properly completed ATF Form 4473 prior to transferring firearms to non-licensed individuals. The licensee transferred firearms for law enforcement agencies to individuals of law enforcement agencies without proper letters from the department or completing an ATF Form 4473 in 7 instances.

Additional Information:

There were 24 traces to this dealer in the last twelve months. Of the 210 firearms reported missing, 53 of those were acquired by the FFL between 2008 and 2009, 48 of those firearms were acquired in 2007. The remainder were acquired between 1994 and 2006, with the majority in the most recent years.

Counsel has reviewed the report and concurs with the recommendation of revocation.

Note: The Hearing Officer's report dated August 23, 2010 indicated that subsequent to the revocation hearing, Guns & Ammo provided documentation that it had found 115 of the 210 (55 percent) missing firearms.

Source: ATF.

APPENDIX II: ATF RESPONSE TO DRAFT REPORT



U.S. Department of Justice

Bureau of Alcohol, Tobacco,
Firearms and Explosives

Office of the Director

SEP 9 2013 Washington, DC 20526

LIT 13-212441 CC:MAA

MEMORANDUM TO: Inspector General

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

SUBJECT: Response to the Office of the Inspector General's Draft
Report on the Review of ATF's Actions in Revoking the Federal
Firearms License of Guns and Ammo

The Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) has reviewed the Department of Justice, Office of the Inspector General's (OIG) draft report on the above-cited subject. We appreciate the opportunity to provide comments on the report and its recommendations. ATF provides the following formal response to the OIG's recommendations:

Recommendation #1: Ensure that all Director of Industry Operations (DIO) are informed and knowledgeable of the most recent administrative action policy and the requirements it contains.

ATF Response: We concur with this recommendation and have taken steps to ensure that DIOs are fully informed and knowledgeable of ATF's administrative action policy. All DIOs received formal training on ATF's current administrative action policy during an assembled training session held in January 2013. ATF's administrative action policy has been further memorialized in ATF Order 5370.1B.

Recommendation #2: Ensure that field divisions are appropriately trained on the handling of administrative actions.

ATF Response: We concur with this recommendation and have provided formal training on the administrative action policy, and now have Headquarters oversight through the Monitored Case Program. The Monitored Case Program requires that detailed briefing papers be prepared on *all* revocations and denials for review by the Deputy Assistant Directors (DAD Industry Operations).

Recommendation #3: Require DIOs to submit Significant Incident Report (SIR) to Headquarters that have been certified or signed by the DIO or Division Counsel to ensure that all available case information and interactions with the Federal firearms licensee are noted on SIRs.

Inspector General

ATF Response: We concur with this recommendation. As part of the Monitored Case Program referenced above, DIOs submit an initial briefing paper on the case, which has replaced the SIRs, in addition to monthly updates until final action is taken. For other administrative actions, such as alternatives to revocation, the DIOs submit briefing papers in a similar format. The DADs (Industry Operations) review the information submitted and, after consultation with counsel, make a determination as to whether the action should progress as proposed.

Recommendation #4: Require DIOs to document and justify the reasons for their final decisions in instances where their decision differs from a hearing officer's recommendation.

ATF Response: We concur with this recommendation. ATF has revised its policy, and hearing officers now prepare a report including a summary of factual findings, but they are not directed or expected to make recommendations; however, DIOs are still required to justify the reasons for their final decisions. Again, the Monitored Case Program is the principal mode through which revocations, denials, and certain other actions are tracked and documented.

Recommendation #5: Consider instituting a series of spot checks of active cases to ensure that field divisions remain in compliance with current ATF policy and procedures.

ATF Response: ATF concurs with this recommendation and has instituted spot checks of cases in N-Spect (an ATF case management system) for compliance with the applicable orders and policies. As a double check, ATF's Field Management Staff routinely runs queries for cases in N-Spect that meet the specified conditions for becoming a monitored case. When a case is found to require monitoring, Field Management Staff contacts the field division and requests an initial briefing paper. This information is then provided to the DADs (Industry Operations).

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



B. Todd Jones

APPENDIX III: OIG ANALYSIS OF ATF RESPONSE

The Office of the Inspector General provided a draft of this report to the Bureau of Alcohol, Tobacco, Firearms and Explosives for its comment. ATF's response is included in Appendix II to this report. The OIG's analysis of ATF's response and the actions necessary to close the recommendations are discussed below.

Recommendation 1: Ensure that all Directors of Industry Operations (DIO) are informed and knowledgeable of the most recent administrative action policy and the requirements it contains.

Status: Resolved.

ATF Response: ATF concurred with this recommendation and stated that it has taken steps to ensure that DIOs are fully informed and knowledgeable of ATF's administrative action policy. ATF stated that all DIOs received formal training on ATF's current administrative action policy during a training session held in January 2013 and the administrative action policy has been memorialized in ATF Order 5370.1B.

OIG Analysis: ATF's actions are responsive to our recommendation. Please provide documentation by January 6, 2014, that includes the attendees and the agenda of the January 2013 training session. Additionally, we request that ATF provide the training materials presented and used during that training session since ATF's Order 5370.1B was not certified until February 8, 2013.

Recommendation 2: Ensure that field divisions are appropriately trained on the handling of administrative actions.

Status: Resolved.

ATF Response: ATF concurred with this recommendation and stated that it has provided formal training on the administrative action policy. ATF also stated that it now has headquarters oversight through the Monitored Case Program, which requires detailed briefing papers be prepared on all revocations and denials for review by the Deputy Assistant Directors (DAD) for Industry Operations.

OIG Analysis: ATF's actions are responsive to our recommendation. Please provide documentation by January 6, 2014, that includes when the formal training was held and the training

materials and attendees if different than those requested in Recommendation 1. Additionally, we request that ATF provide examples of cases within the Monitored Case Program as well as sample briefing papers.

Recommendation 3: Require DIOs to submit SIRs to headquarters that have been certified or signed by the DIO or the Division Counsel to ensure that all available case information and interactions with the FFL are noted on SIRs.

Status: Resolved.

ATF Response: ATF concurred with this recommendation. ATF stated that as part of the Monitored Case Program, DIOs submit initial briefing papers, which have replaced SIRs, in addition to monthly updates until a final action is taken in a case. ATF also stated that DIOs submit briefing papers in a similar format for other administrative actions. Additionally, the DADs for Industry Operations review the information and, after consultation with counsel, make a determination on whether the proposed action should proceed.

OIG Analysis: ATF's planned actions are responsive to our recommendation. Please provide documentation by January 6, 2014, of sample briefing papers for the different types of administrative actions. Additionally, we request documentation from the Monitored Case Program system that shows examples of DIO monthly updates and verification that the DADs have reviewed the information the DIOs submitted.

Recommendation 4: Require DIOs to document and justify the reasons for their final decisions in instances where their decision differs from a Hearing Officer's recommendation.

Status: Resolved.

ATF Response: ATF concurred with this recommendation. ATF stated that it revised its policy. ATF also stated that hearing officers are not directed to make recommendations; rather they are required to prepare a report containing a summary of factual findings. ATF also stated that DIOs are still required to justify the reasons for their final decisions.

OIG Analysis: This change by ATF to its policy is unrelated to any recommendation by the OIG, and the OIG was previously unaware of the policy revision. Please provide a copy of the revised ATF policy, including

any statement of the reasons for the change, and any additional guidance provided to hearing officers in conducting firearms license hearings by January 6, 2014. Lastly, we request that ATF provide examples from the new Monitored Case Program that shows DIO documentation for the reason for their final decisions.

Recommendation 5: Consider instituting a series of spot checks of active cases to ensure that field divisions remain in compliance with current ATF policy and procedures.

Status: Resolved.

ATF Response: ATF concurred with this recommendation and stated that it instituted spot checks of cases in ATF's N-Spect database for compliance with applicable orders and policies. ATF stated that ATF's Field Management Staff routinely runs queries for cases in N-Spect that meet the specified conditions for becoming a monitored case. ATF also stated that when a case is found to require monitoring, the Field Management Staff requests an initial briefing paper from the field division and provides it to the DADs for Industry Operations.

OIG Analysis: ATF's planned actions are responsive to our recommendation. Please provide documentation by January 6, 2014, that shows an example of the queries run and any briefing papers that were requested from the field for cases that required monitoring. Additionally, we request documentation that shows how many cases have been tested for compliance, as a percentage of overall cases. We also request that ATF provide information on how the monitored cases were selected and the outcome in the selected cases.