June 16, 2014

SUBMITTED VIA E-MAIL

Ms. Natisha Taylor
United States Department of Justice
Bureau of Alcohol, Tobacco, Firearms and Explosives
99 New York Avenue NE
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fipb-informationcollection@atf.gov

Re: Comments of Everytown for Gun Safety on OMB Number 1140-0100: Agency Information Collection Activities; Proposed eCollection; Report of Multiple Sale or Other Disposition of Certain Rifles, 79 Fed. Reg. 72 (filed April 15, 2014)

Dear Ms. Taylor:

Everytown for Gun Safety ("Everytown"), a national, bipartisan coalition of mayors, moms, law enforcement officials, survivors, and everyday Americans and the country’s largest gun violence prevention advocacy group, submits these comments on the United States Department of Justice (the "Department"), Bureau of Alcohol, Tobacco, Firearms and Explosives’ (the “Bureau”) Notice of Agency Information Collection Activities, which proposes to extend the requirement that federal firearms licensees in the four American states bordering Mexico report when any individual buys multiple rifles meeting certain criteria within a period of five business days. Reporting such multiple sales has been critical to investigating gun and drug trafficking and stopping organized crime. Indeed, as gun trafficking is a national problem, the Bureau should consider extending this reporting requirement to dealers in all 50 states.

For many years, Mayors Against Illegal Guns ("MAIG"), a bipartisan coalition of 1,000 current and former mayors (which merged with Moms Demand Action in 2014 to form Everytown), has engaged in research on the national problem of gun trafficking. In September 2010, MAIG released a report analyzing trace data and finding a link between the strength of state gun laws and the likelihood that guns (1) will be exported to another state for use in a crime and (2) will move quickly from retail sale to recovery at a crime scene—a key indicator of trafficking known as “time to crime.”1 This report is attached to these comments as Exhibit A. The report advocated

1 MAYORS AGAINST ILLEGAL GUNS, Trace the Guns: The Link Between Gun Laws and Interstate Gun Trafficking (September 2010) (attached as Exhibit A). Additional and updated research is also available at http://www.tracetheguns.org/.
for common-sense gun laws that would impact gun trafficking, including inspections and proper record keeping for licensed firearms dealers.

Recognizing the key role that multiple sales play in gun trafficking crime, MAIG proposed in 2009 that the Bureau extend the requirement that dealers report multiple sales of handguns to include multiple sales of certain long guns by some dealers. MAIG’s proposal was the basis for the long gun multiple sales reporting initiated by the Department in 2010-2011—which is that is the subject of this Notice. Further, MAIG and Everytown have advocated for federal legislation to make trafficking a federal crime and to increase penalties for trafficking kingpins, and have pressed Congress to repeal a budget rider that prevent the Bureau from requiring dealers to report on their inventories.

Requiring that federally licensed dealers report multiple sales or dispositions of certain long guns provides an invaluable tool for law enforcement to stop violent gun-related crime and break up trafficking rings. Recognizing the critical importance of this tool and the national dimensions of trafficking, the Department should not only renew multiple sales reporting in Arizona, California, New Mexico, and Texas, but should also extend the requirement to dealers in all 50 states.

1. For Nearly 40 Years, Dealers Have Been Required by Federal Regulation and Statute to Report Multiple Sales of Handguns to the Bureau.

Since 1975, all federally licensed firearms dealers have been required to report multiple handgun purchases by a single purchaser within a period of five business days. This reporting requirement for handguns is intended to help “monitor and deter illegal interstate commerce in pistols and revolvers.” According to a report by the Government Accountability Office (“GAO”), this “federal reporting requirement was established to cover multiple sales of handguns, following studies showing that handguns sold in multiple sales to the same individual purchaser were frequently used in crime.”

In August 2011, the Bureau began a program requiring licensed dealers in the four southwest border states—Arizona, California, New Mexico, and Texas—to report when any individual buys two or more rifles that meet certain criteria within a period of five business days. This

3 MAIG and Everytown support the passage of Senate Bill 53, the Stop Illegal Trafficking in Firearms Act of 2013, which would make trafficking a federal crime and would address “straw purchasing” situations in which one individual purchases a gun on behalf of another.
6 UNITED STATES GOVERNMENT ACCOUNTABILITY OFFICE, Firearms Trafficking: U.S. Efforts to Combat Arms Trafficking to Mexico Face Planning and Coordination Challenges (June 2009), at 28, available at http://1.usa.gov/1pB1z69 [hereinafter Firearms Trafficking].
program, sometimes known as the “Demand Letter 3” program, requires reporting for multiple sales of all semiautomatic rifles having a caliber greater than .22 and with the ability to accept detachable magazines. The Bureau issued this requirement under its 18 U.S.C. § 923(g)(5) “demand letter” authority, which authority requires federally licensed dealers to submit any information required to be kept by law, if and to the extent submission is required by written letter from the Bureau.

2. The Current Multiple Sales Reporting Requirement for Handguns, and for Certain Rifles under Demand Letter 3, Helps Law Enforcement to Stop Crime.

Since it began in 2011, the Demand Letter 3 program has generated thousands of reports from dealers and has assisted the Bureau and law enforcement officials in protecting the public from gun-related crime.

a. Multiple Firearm Sales Are a Marker for Trafficking and for Subsequent Use in Violent Crime.

The Bureau has stated that multiple sales of firearms are a “significant indicator” for gun trafficking. Multiple sales are a common feature of major gun trafficking prosecutions as well: In one case where a trafficking ring purchased at least 251 rifles or shotguns over a 16-month period, all but one of those weapons was purchased as part of a multiple sale. The Bureau’s research into gun tracing data also shows that more than one in five handguns recovered at crime scenes in 32 examined cities were originally purchased as part of a multiple sale. A similar study found that handguns bought in multiple sales in Maryland were 64 percent more likely to be used in crime than other Maryland handguns, and that one in four handguns bought in Maryland and subsequently recovered at crime scenes had been sold as part of a multiple sale. That study also showed that recovered guns that had been sold in multiple sales had a shorter time to crime than other guns, suggesting a nexus between multiple sales and trafficking. The Maryland study identified the purchase of multiple guns as a “promising intervention point[] for reducing the flow of guns into illicit markets.” Another national study

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9 Firearms Trafficking, supra note 6, at 28.
13 See id. at 7.
similarly concluded that guns sold by those dealers who make a high number of multiple sales are more likely to have a short time to crime.\textsuperscript{14}

b. The Multiple Sales Reporting Requirement Gives the Bureau and Law Enforcement Officials a Mechanism to Track Guns Quickly and Is a Critical Tool for Criminal Investigations.

The Bureau reported in 2000 that it had initiated 205 investigations based on reviews of multiple handgun sales reports, representing 13 percent of all Bureau criminal trafficking investigations.\textsuperscript{15} In practice, both Bureau headquarters and the National Tracing Center send multiple sales reporting data to Bureau field offices, and field offices use that data to uncover trafficking patterns in the regions where they have expertise. The Bureau may look for a variety of indicators from those multiple sales, including purchasers with a history of connections to guns used in crimes or who have been linked to more than one multiple sale. A report by the Department of Justice, Office of Inspector General (“OIG”) confirms that “reports of multiple sales of handguns produce timely, actionable investigative leads for ATF.”\textsuperscript{16}

When law enforcement traces a handgun recovered at a crime scene, the trace is faster and more efficient if the gun was purchased in a multiple sale, giving law enforcement a critical advantage in catching potentially violent criminals.\textsuperscript{17} In a trace, the Bureau queries the serial number of the recovered firearm; if the gun was purchased in a multiple sale, the Bureau can use the dealer report produced by the sale (and already submitted to the Bureau) to identify the retail purchaser immediately. If the gun was not purchased in a multiple sale and reported as such, the Bureau will only be able to trace the gun by contacting the manufacturer and then the wholesaler to identify the retailer who first sold the gun to an unlicensed person. The Bureau must then contact the retailer to determine the first retail purchaser.

According to an OIG report on the Bureau’s programs, if a traced crime gun is connected to multiple sales reporting information, the trace “can be completed in minutes rather than days or weeks.”\textsuperscript{18} The National Tracing Center staff estimates that a trace not linked to such reporting takes 7 to 10 days to complete,\textsuperscript{19} and the Bureau has said it takes an average of 14 days to complete a trace of a crime gun recovered in Mexico.\textsuperscript{20} Leads generated from trace results “are most useful within the first few days following a firearm seizure,” as trafficking rings are fast-

\begin{thebibliography}{99}
\bibitem{16} \textit{Review of ATF’s Project Gunrunner}, supra note 10, at 39.
\bibitem{17} \textit{Firearms Trafficking}, supra note 7, at 28 (“officials noted the federal multiple sale reporting requirement helps expedite the time required by ATF to complete a crime gun trace”).
\bibitem{18} \textit{Review of ATF’s Project Gunrunner}, supra note 10, at 37.
\bibitem{19} Id.
\bibitem{20} \textit{Firearms Trafficking}, supra note 6, at 25-26
\end{thebibliography}

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moving and change personnel frequently. Thus, multiple sales reporting provides the Bureau with important data at the moment when such information is most critical to the investigation and to prevention of future crimes. Without that information, law enforcement may miss critical leads and the trail of a criminal may run cold.

The same logic that supports the nearly 40-year-old reporting requirement for multiple handgun sales applies equally to a long gun reporting requirement. Indeed, the OIG found that long guns have a shorter time to crime than handguns, and noted that the percentage of crime guns recovered in Mexico that are long guns increased several years in a row before the southwest reporting rule was introduced.

c. The Current Long Gun Reporting Program Has Played a Significant Role in Helping the Bureau to Prevent Gun Trafficking Along the Border, Where Long Guns Are Commonly Used by Mexican Cartels to Commit Violent Crimes.

The long gun reporting requirement has helped law enforcement crack down on gun trafficking, particularly along the southwest border. Before the Demand Letter 3 program was implemented, an OIG study found that the lack of reporting of multiple purchases of long guns “hinders ATF’s ability to disrupt the flow of illegal weapons into Mexico.” And once the program was in place, its effect was seen immediately: During its first eight months, the program generated more than 3,000 reports from the four border states, which accounted for the purchase of more than 7,300 rifles. The Bureau opened more than 120 criminal investigations based on these multiple rifle sales reports alone, and prosecution was ultimately recommended for over 100 defendants.

The semi-automatic rifles subject to the Demand Letter 3 reporting program are especially likely to be used by traffickers, and these long guns disproportionately fuel Mexican cartel violence. Between December 2006 and September 2011, these drug gangs reportedly killed more than 47,000 people in Mexico, including thousands of police and military personnel. According to the Department, “long guns have become Mexican cartels’ weapons of choice.” Indeed, the Bureau’s assistant director for field operations testified to Congress that drug traffickers no longer favor handguns, but rather “have developed a preference for higher quality more powerful

\[21\] Firearms Trafficking, supra note 6, at 26.
\[22\] Review of ATF’s Project Gunrunner, supra note 10, at 38.
\[23\] Review of ATF’s Project Gunrunner, supra note 10, at iv.
\[24\] from mid-August 2011 through mid-April 2012
\[25\] ATF Fact Sheet: Multiple Sales Reporting Analysis, BUREAU OF ALCOHOL, TOBACCO, FIREARMS AND EXPLOSIVES (May 4, 2012), available at http://1.usa.gov/1i1BVVN.
\[26\] See id.
\[27\] 47,000 People Killed in Drug Violence in Mexico, ASSOCIATED PRESS (Jan. 11, 2012), available at http://fxn.ws/1q0Prcn.
\[28\] Review of ATF’s Project Gunrunner, supra note 10, at 36.
“weapons”—especially rifles with larger calibers. There has been a concomitant decrease in the use of handguns by these cartels.

Long guns recovered in crimes in Mexico are also more likely to have a short time to crime, further indicating their prevalence in trafficking. In one case, 251 out of 336 guns purchased in the United States by one Mexican cartel over 16 months (in a total of 96 purchases) were long guns. One individual prosecuted as a result of that investigation had purchased firearms linked to eight different murders in Mexico. According to the OIG, the investigation into that cartel could have begun at least a year earlier—if only a long gun multiple sales reporting requirement had been in place at the time of the purchases.

Rifles like the ones subject to Demand Letter 3 reporting—including 7.62 mm AK-type rifles and .223 caliber AR-15 type rifles, which are among the firearms recovered most frequently in Mexico—are commonly paired with high-capacity magazines. When assault weapons and high-capacity magazines are used in mass shootings, they consistently kill more people. In an analysis of mass shootings between January 2009 and September 2013, MAIG reported that when assault weapons and high-capacity magazines are used in mass shootings, 151 percent more people are shot and 63 percent more people are killed. Simply put, violent crime is more deadly when these weapons are used.

In sum, there is ample evidence establishing multiple firearm sales as a marker of gun trafficking and subsequent use in violent crimes, and showing that access to records from these sales helps law enforcement to disrupt trafficking. As discussed below, the Bureau should continue the requirement that licensed firearms dealers in the four border states report multiple long gun sales and should consider requiring the same reports from licensed firearms dealers in all 50 states.

3. The Bureau Is Clearly Empowered to Require Dealer Reporting of Multiple Long Gun Sales in the Four Border States and Should Continue to Do So.

As the Bureau is considering extending the multiple sales reporting requiring for the four border states, it is significant to note that every federal court that has addressed the issue has found that requiring dealers in those states to report multiple long gun sales is well within the Bureau’s regulatory power under the demand letter authority set forth in 18 U.S.C. § 923(g)(5).

In May 2013, a three-judge panel of the U.S. Court of Appeals for the D.C. Circuit unanimously held that federal law “unambiguously authorizes” the Demand Letter 3 program, upholding a

30 Firearms Trafficking, supra note 6, at 17.
31 Review of ATF’s Project Gunrunner, supra note 10, at 39.
32 Id.
33 Firearms Trafficking, supra note 6, at 17.
prior decision in the district court.\textsuperscript{35} Then, in July 2013, a unanimous panel of the U.S. Court of Appeals for the Fifth Circuit adopted the D.C. Circuit’s finding that federal law “unambiguously authorizes the demand letter,” affirming another district court decision.\textsuperscript{36} A March 2013 opinion from the U.S. District Court for the District of New Mexico also held that the Demand Letter\textsuperscript{3} program was within the Bureau’s authority.\textsuperscript{37}

4. The Bureau Should Extend the Long Gun Multiple Sales Reporting Requirement to All Fifty States to Reflect the National Scope of Gun Trafficking.

Everytown strongly urges the Bureau to consider requiring federally licensed dealers across the United States to report multiple sales of these rifles, given the effectiveness of the current reporting program in the four southwest border states to date and the inherently nationwide threat posed by gun trafficking. Just as the handgun multiple sales reporting requirement applies to dealers throughout the country, the Bureau should require the reporting of the same information for covered long guns.

a. Trafficking Is a Problem With National Dimensions.

Trafficking is a national problem that cannot be solved by a single state’s legislators and law enforcement, and cannot be solved by focusing on the four border state sales alone.

As MAIG’s \textit{Trace the Guns} report documented, trafficking is a problem throughout the country. Indeed, while states with significant dealer regulations—requiring sales reporting and subjecting dealers to inspection—do export fewer crime guns, they are at the mercy of the weaker controls of their neighbors, which may provide traffickers with easy access to guns. \textit{Trace the Guns} demonstrated that in 2009 ten states supplied nearly half—49 percent—of all crime guns recovered outside of the state where they were sold.\textsuperscript{38} Conversely, New York City has some of the strongest gun laws in the country, and 90 percent of all crime guns recovered in the city were first purchased outside of the state.\textsuperscript{39}

The Bureau considers crime guns traced to out-of-state multiple sales to be an indicator of trafficking—further evidence that trafficking is a national problem. Additionally, a study of Maryland crime guns indicated specifically the role played by cross-state multiple sales: “[M]ultiple sales are an important mechanism for the trafficking of guns from jurisdictions with more lenient gun controls to those with more stringent gun controls.”\textsuperscript{40}

\textsuperscript{36} \textit{10 Ring Precision, Inc. et al. v. Jones}, 722 F.3d 711, 718 (5th Cir. 2013).
\textsuperscript{38} Exhibit A, at 2.
\textsuperscript{40} Koper, \textit{supra} note 12, at 76.
According to the Bureau’s data, 70 percent of firearms recovered and traced in drug cartel crimes in Mexico originate from the United States.41 Prior to the implementation of the southwest long gun reporting rule, the lack of any long gun requirement was identified by the federal government as a “key challenge [in] combat[ting] illicit sales of firearms in the United States.”42

And the reach of Mexican cartels extends far beyond the four border states currently subject to the long gun multiple sales reporting requirement. Mexican drug trafficking organizations control most of the American drug market, and they have distribution networks in at least 230 American cities in over 40 states across the country, from the Pacific Northwest to New England to the Deep South.43 While the majority of the Mexican crime guns traced to dealers in the United States from 2004 to 2008 came from Arizona, California, and Texas, roughly one-third of those guns came from the rest of the country.44


The Bureau is hamstrung by obstacles that make it difficult to stop traffickers and prevent crime, making it even more essential that law enforcement be empowered with real-time information about multiple long gun sales. In particular, one rider attached to the federal budget obstructs the Bureau’s enforcement efforts.

The “inventory rider” prevents the Bureau from requiring licensed dealers to account for trafficked guns by maintaining an annual inventory. Since 2004, this rider has prohibited the Bureau from requiring dealers to account for their inventory, even though dealers are required to maintain records by federal law and would not be burdened by inventory requirements. Gun dealers are obligated to report all lost and stolen guns to the Bureau, and guns reported as lost or stolen frequently end up at crime scenes, indicating that theft is a common channel for diverting guns into criminal hands. And a recent OIG report shows that tens of thousands of guns go missing from dealer inventory each year—many of them falling into the hands of traffickers.45 But because they are not required to keep an inventory, corrupt dealers can sell guns to traffickers and other prohibited purchasers and then later claim that the guns are lost or stolen if they show up in a crime or come up missing during a Bureau inspection. And the Bureau cannot address this problem simply with routine dealer inspection, as it does not have the resources to inspect gun dealers regularly. Indeed, the Bureau inspects less than 58 percent of dealers in any five-year period.46

42 Firearms Trafficking, supra note 6, at 24.
43 Firearms Trafficking, supra note 6, at 1-2, Fig. 2 at 9.
44 Id. at 19.
46 Id. at 13.
Congress has hamstrung law enforcement with this rider, blocking the Bureau from collecting critical information that would expose corrupt dealers and stop crime in its tracks. In the absence of that comprehensive information, extending the long gun multiple sales reporting requirement to dealers in every state would give the Bureau real-time information about sales that are uniquely indicative of trafficking.

c. The Bureau Has Authority to Extend the Requirement to All 50 States and Such an Extension Would Not Burden Dealers.

As discussed above, every federal court that has considered the Bureau’s authority to require multiple sales reporting of certain long guns in the four border states has concluded that the Demand Letter 3 program is well within the powers granted to the Bureau by federal law. Courts have recognized that the long gun reporting under Demand Letter 3 constitutes “record information” collection under 18 U.S.C. § 923(g)(5)(A) and that therefore the Bureau may issue a letter requiring collection of such information. As the Ninth Circuit observed, “[w]hile Congress has long sought to prohibit the Bureau from establishing a national firearms registry, the Bureau’s actions here do not come close to realizing this forbidden goal. Rather, the demand letter at issue seeks a limited amount of information from [federal firearms licensee] dealers in order to help remedy the problem posed by tracing secondhand firearms.”

Likewise, expansion of the reporting requirement to all 50 states does not create a national system of registration of firearms, prohibited by 18 U.S.C. § 926(a), as the Demand Letter 3 program is limited by its very nature to only certain types of transactions, covering a relatively small percentage of total firearms sales by licensed dealers in the United States.

Extending the program to all 50 states would continue to be within the broad grant of demand letter authority in 18 U.S.C. § 923(g)(5) and would not conflict with other limitations placed upon the Bureau by federal statute.

Moreover, licensed dealers in the 50 states will not be burdened by this reporting requirement. Dealers have been required to file a similar form for multiple sales of handguns for almost 40 years and are accustomed to this reporting. Dealers are also already required by federal law to keep detailed records for all acquisitions and dispositions, and any additional time required for reporting multiple long gun sales would be minimal. Indeed, the current proposed information collection estimates that the multiple sales form takes only 12 minutes to complete—and estimates that only a total of 3,615 hours annually will be spent on the requirement, which affects over 2,500 dealers in the border states.

Regardless of whether the Bureau does extend the long gun reporting requirement to 50 states, it should regularly publish data on the impact of existing multiple sales requirements—including how many investigations were initiated or aided based on these reports, how many guns were seized, how many prosecutions were recommended, and how many indictments and convictions

47 J.G. Sales v. Truscott, 473 F.3d 1043, 1049 (9th Cir. (2007); see also e.g., Nat’l Shooting Sports Found., Inc. v. Jones, 716 F.3d 200, 207-10 (D.C. Cir. 2013).
48 Id. at 212-14.
were obtained. This vital information would further the record in this area and help to demonstrate the critical importance of this tool.

5. **Recommendation.**

For the reasons outlined above, Everytown supports the Bureau’s extension of the multiple sales reporting requirement for certain rifles in Arizona, California, New Mexico, and Texas. In addition, Everytown encourages the Bureau to extend this reporting requirement to dealers in all 50 states.

Everytown appreciates the Bureau’s efforts in proposing the extension of the current information collection and thanks the Bureau for the opportunity to offer this comment.

Respectfully submitted,

/s/

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