

**The below table represents a summary of the comments received by ATF as of February 25, 2011. ATF received a total of 12,680 comments. 8,928 of those comments supported the collection, 3,752 comments were opposed.**

<b><u>Number of Comments</u></b>	<b><u>Substance of Comments</u></b>
8,909	In support of the collection: ATF must use its authority to collect this information and do more to crack down on the gun smuggling carried out by or on behalf of the Mexican drug cartels
2,047	Opposed to the collection: There is no statutory or constitutional basis for ATF's proposed collection of information and the proposed collection is illegal
876	Opposed to the collection: Either did not offer a basis for the opposition, or included irrelevant comments or unsubstantiated data
265	Opposed to the collection: The collection will be a waste of resources
241	Opposed to the collection: The collection will further add to the burdens imposed upon American retailers
186	Opposed to the collection: The collection will not assist law enforcement
130	Opposed to the collection: No additional laws or regulations are necessary
19	In support of the collection: The collection will help detect illegal firearms trafficking schemes and will not impose a significant burden on firearms retailers
7	Opposed to the collection: ATF should be defunded and abolished

**1. ATF must use its authority to collect this information and do more to crack down on the gun smuggling carried out by or on behalf of the Mexican drug cartels (8909 comments).**

More than 8,000 respondents urged ATF to use its authority to collect long gun multiple sale information in accordance with the proposal, crack down on gun smugglers, and better enforce existing gun laws. Others added that the proposal was a timely response to the increased violence, including the rising number of homicides, along the southwest border.

ATF agrees that requiring southwest border FFLs to report certain rifle transactions is a tool that will provide actionable law enforcement intelligence that, when acted upon, will reduce illegal

firearms trafficking and gun violence along the southwest border. The proposed collection of information is a tailored, discrete, responsible, and proactive approach to dealing with a significant law enforcement issue.

The information obtained from this collection will augment ATF's ability to detect illegal firearms trafficking patterns; it will lead to enhanced utilization of ATF resources; and it will not impose a significant burden on FFLs. The collection will have a direct and positive impact on public safety.

## **2. Comments challenging the statutory basis or constitutionality of the proposed collection of information (2,047 comments).**

### **2a. There is no statutory basis for ATF's proposed collection of information and the proposed collection is "illegal".**

The Federal firearms laws provide that Federal firearms licensees (FFLs) are required to maintain such records of importation, production, shipment, receipt, sale, or other disposition of firearms at their place of business for such duration and in such form as prescribed by the Attorney General. See 18 U.S.C. § 923(g)(1)(A); 27 C.F.R. § 478.121, 124, 125(e). These records are not regularly submitted to ATF, however they are kept on the premises of the FFL and available to ATF under a variety of circumstances, including during inspections and investigations. Additionally, FFLs that go out of business must submit their records to ATF within thirty days. See 18 U.S.C. §923(g)(4). Moreover, and of particular note with respect to ATF's proposed collection of information in this instance, FFLs are required, when notified by letter, to "submit on a form specified by the Attorney General, for periods and at the times specified in such letter, all record information required to be kept by [18 U.S.C. Chapter 44] or such lesser record information as the Attorney General in such letter may specify." 18 U.S.C. § 923(g)(5) (A). Thus, the record information that ATF has proposed to collect regarding the sales of certain rifles by dealers in Arizona, California, New Mexico, and Texas is authorized by § 923(g)(5)(A). Both the Fourth and Ninth Circuits – the only courts of appeal to have considered the question – have recognized that § 923(g)(5)(A) authorizes ATF to collect record information from FFLs regardless of whether the FFL otherwise has an obligation to provide it. See J&G Sales v. Truscott, 473 F.3d 1043, 1048 (9th Cir. 2007) ("there can be no question that § 923(g)(5)(A) authorizes the Bureau to issue the disputed demand letter"); Blaustein & Reich, Inc. v. Buckles, 365 F.3d 281, 287 (4th Cir. 2004) ("§ 923(g)(5)(a) expressly requires an FFL to produce record information when the Bureau issues a demand letter seeking it.").

### **2b. When Congress specifically enacted a statutory provision requiring Federal firearms licensees to report multiple sales of handguns, it could have, but did not, require a similar report for multiple sales of long guns.**

In questioning ATF's authority to collect the information that is the subject of this proposal, a number of commenters have argued that the authority to require reports of multiple sales lies exclusively within 18 U.S.C. § 923(g)(3)(A), which requires such reports for handguns only. Additionally, some commenters have claimed that the legislative history of § 923(g)(5)(A) suggests that it was not intended to be used to obtain

routine information about otherwise legal dispositions. According to the National Rifle Association's comment, for example, the demand letter provision only authorizes ATF to obtain information from dealers: (1) who are in violation of law, or (2) concerning specific firearms dispositions necessary for bona fide criminal investigations. Similar arguments have been made before and rejected when ATF has used § 923(g)(5)(A) to obtain other kinds of record information from FFLs. Because § 923(g)(5) is an affirmative grant of authority to ATF to obtain information by demand letter, such authority is not limited by the multiple sales reporting provision of § 923(g)(3)(A) or by any other provision of § 923(g). See, e.g., Blaustein & Reich, Inc. v. Buckles, 365 F.3d 281, 287-88 (4th Cir. 2004). “[ATF] when acting pursuant to § 923(g)(5), is not restricted to issuing demand letters in connection with criminal investigations or noncompliant [licensees].” *Id.* Also, see RSM, Inc. v. Buckles, 254 F.3d 61, 66 (4th Cir. 2001); J&G Sales v. Truscott, 473 F.3d 1043, 1049 (9th Cir. 2007).

**2c. ATF's proposed collection constitutes an unlawful attempt by ATF to compile a centralized registry of gun-owner data in violation of 18 U.S.C. § 926(a).**

Some commenters have argued that the demand letter authority contained in § 923(g)(5)(A) is restricted by § 926(a), which prohibits the establishment of any centralized registration system of firearms ownership. ATF agrees that, in exercising its authority under § 923(g)(5)(A), it must not violate § 926(a), but the contention that the current proposal violates § 926(a) is incorrect for at least two reasons.

First, the authority provided to ATF in § 923(g)(5)(A) is entirely consistent with § 926(a). § 926(a) prohibits a “rule or regulation” issued after 1986 from attempting to establish a firearms registry. ATF's authority to collect the information that is the subject of this proposal, however, lies in a statutory provision (§ 923(g)(5)(A)), not a rule or regulation. In fact, when Congress enacted § 923(g)(5)(A) as part of the Firearm Owners' Protection Act in 1986 (FOPA), ATF already had regulatory authority (set forth in the Gun Control Act's implementing regulations, published December 14, 1968) to issue demand letters. FOPA simply codified these existing regulations at the same time it enacted § 926(a).

Second, the collection of information described by this proposal—a limited collection of information regarding limited types of firearms for limited purposes—cannot fairly be categorized as a registry of firearms or firearms owners. The Courts of Appeal, for example, have affirmed that obtaining firearms ownership information pursuant to the authority in § 923(g)(5)(A) does not violate § 926(a). See Blaustein, 365 F.3d at 289; RSM, 254 F.3d at 68; J&G Sales, 473 F.3d at 1051. As with the collections in those court cases, the information ATF is currently proposing to collect will not serve to aggregate firearms transaction information in a manner that goes beyond the purposes of the Gun Control Act, but rather will be narrowly tailored to obtain limited records to assist ATF in its efforts to combat illegal firearms trafficking into Mexico, and to reduce related cross-border violence. Similarly, the United States General Accounting Office (GAO), for example, opined in a September 1996 report that ATF's receipt of reports of multiple sales of handguns pursuant to § 923(g)(3)(A) did not create a centralized gun registry in violation of § 926(a). Accordingly, ATF is confident that its current limited proposal for long guns will not contravene § 926(a) or any related restrictions attached to ATF's annual appropriations bills.

**2d. The proposed collection of information violates the United States Constitution because it will infringe upon the Second Amendment rights of law-abiding citizens.**

Numerous commenters expressed the opinion that the proposed collection of information would infringe upon their Second Amendment rights. In District of Columbia v. Heller, 128 S.Ct. 2783 (2008), the Supreme Court held that the Second Amendment to the U.S. Constitution protects an individual (as opposed to collective) right to keep and bear arms. The scope of that protection, however, was left largely undefined by the Court. The Court expressly noted that the right protected by the Second Amendment was “not unlimited,” and that “laws imposing conditions and qualifications on the commercial sale of arms” were “presumptively lawful.” Id. at 2816-17 & n.26. The Supreme Court reiterated those holdings last year in McDonald v. City of Chicago, 130 S.Ct. 3020, 3047 (2010). Although the exact parameters of what is and is not protected by the Second Amendment remain to be articulated by the Court, ATF is confident that collecting information about multiple sales of certain firearms does not infringe upon either the buyer’s or the seller’s constitutional rights.

**3. Opposed to the collection: Either did not offer a basis for the opposition, or included irrelevant comments, or provided unsubstantiated data (876 comments).**

Since 2006, there has been a significant increase in drug and firearms-related violence in Mexico and along our southwest border. In response to this increased violence, ATF has deployed focused resources to interdict and prevent illegal firearms trafficking along the southwest border and into Mexico. The multiple sale reports ATF is seeking to collect will provide real-time leads for the investigation of illegal gun trafficking. By obtaining that information in a timely fashion, ATF will have an enhanced capability to uncover and disrupt illegal trafficking schemes before the firearms make their way into Mexico and thus diminish firearms violence on both sides of the border.

**4. Opposed to the collection: The collection will be a waste of Federal resources (265 comments).**

ATF trace data and the recovery of firearms in Mexico have confirmed that a significant number of those firearms are being traced back to sales by Federal firearms dealers in the United States. The collection ATF is proposing will enhance ATF’s ability to stop some of those firearms before they cross the border and are delivered into the hands of persons or organizations intending to use them to commit violent acts with potentially fatal consequences. ATF’s National Tracing Center is already staffed with personnel who are familiar with handling multiple sales reports, and those same personnel will process the information collected as a result of this proposal. ATF will not use or require any additional resources to implement this program.

Moreover, the cost of printing, distributing and processing of the multiple sale reports relating to certain rifles will be minimal compared to the cost to public safety if this program is not implemented.

**5. Opposed to the collection: The collection will further add to the burden imposed upon American retailers (241 comments).**

ATF believes that the overall burden of this collection will be minimal to FFLs. The collection will only apply prospectively, so that FFLs will not be obligated to go back through their records and report multiple sales that may have occurred in the past. The information to be collected will be drawn from records FFLs are already required to maintain. Specifically, the information is summarized in each FFL's acquisition and disposition (A&D) records.

The burden will not affect all FFLs. The collection will only be directed to FFLs in four southwest border states. In addition, FFLs in those respective states who do not make multiple sales or dispositions of the specified rifles will not incur any additional burdens. Moreover, the collection only applies to certain rifles having all of the following characteristics:

- A semi-automatic action;
- A caliber greater than .22 (including .223 and 5.56 caliber); and
- The ability to accept a detachable magazine.

Based upon ATF's experience with multiple handgun sale reports, the estimated average burden associated with this collection is 12 minutes per report. If an FFL makes four specified multiple sales per year, the total burden would be 48 minutes. Compared to the public safety benefit that ATF believes this collection will produce, this amount of additional burden is not undue or onerous.

**6. Opposed to the collection: The collection will not assist law enforcement (186 comments).**

According to ATF trace data, investigative experience, and Mexican law enforcement officials, a large number of rifles that originated from FFLs in the U.S. are being used to commit violent crimes in Mexico and along the U.S. border. This collection is focused on obtaining potentially useful information about the initial sale of specified rifles by a limited number of FFLs. This information will enhance ATF's ability to identify and disrupt illegal firearms trafficking schemes.

**7. Opposed to the collection: No additional laws or regulations are necessary (130 comments).**

The authority to obtain record information from FFLs has been in place since 1968. That authority has been used on multiple occasions since then and is an important tool facilitating the enforcement of existing laws that regulate the commercial sale of firearms. By pursuing this collection, ATF is neither issuing new regulations nor creating programs that Congress has not authorized.

**8. In support of the collection: The collection will help detect illegal firearms trafficking schemes and will not impose a significant burden on firearms retailers (19 comments).**

These commenters were supportive of the implementation of the collection and are in agreement with ATF's views that this information will assist law enforcement situated along the southwest border. Law enforcement will help ensure the safety of the communities in this region by identifying criminal firearms trafficking along the southwest border. The receipt of the multiple sales reports will give ATF real-time leads for the investigation of illegal firearms trafficking, enabling ATF to more effectively address that activity and prevent violence on both sides of the U.S./Mexican border. ATF trace data, investigative experience, and information provided by Mexican law enforcement officials corroborates that multiple simultaneous purchases of the rifles subject to this collection from FFLs in the southwest border states can be a strong indicator of illegal firearms trafficking to Mexico.

ATF recognizes that this collection may impose an additional burden on some Federal firearms licensees, but taken together, limiting the geographic scope, impacting a limited number of licensees and affecting a specific group of rifles, this collection is a tailored, discrete, responsible, and proactive approach to a significant law enforcement issue.

**9. Opposed to the collection: ATF should be defunded and abolished (7 comments).**

These comments are not relevant to the subject at hand.