

(b) (6)

From: (b) (6)
Sent: Thursday, September 06, 2007 4:59 PM
To: (b) (6)
Cc: (b) (6)
Subject: Top Crime Guns in 9 NE States - NTC Assignment #LE0706987
Attachments: Top Guns NE States.xls

(b) (6)

The National Tracing Center has processed your request to provide you information from the Firearms Tracing System (FTS) concerning top firearm traces in the past year for guns recovered in the Northeast states of MA, CT, RI, VT, NH, ME, NY, PA, and NJ. The time period I used to extract the information from FTS was traces entered into the FTS database from September 1, 2006 through August 31, 2007 with recoveries in the nine NE states. The attached file, "Top Guns NE States.xls" contains two worksheets with the information you requested for question # 1.

1. The first worksheet, "1. Top Model", lists the top 83 Public Law 112-55 (125 Stat. 552) firearms traced by manufacturer, caliber, weapon type, and model. Smith & Wesson models ranked 13, 15, and 19.
2. The second worksheet, "2. Top MFG-CAL-TYPE", lists the top 83 Public Law 112-55 (125 Stat. 552) firearms traced by manufacturer, caliber, and weapon type. Smith & Wesson ranked 1, 5, and 6.

I will not be in the office tomorrow, but I will be get you the information for question # 2 (list of Top 25 dealers of S&W nationwide) Monday. I forwarded question # 3 (thefts/losses for all 4 S&W licenses) to co-worker (b) (6) who manages the Stolen Firearm Program. He should be able to get you the information Friday.

Please let me know if you have any questions or need additional information.

Please be advised that H.R. 4818, the Consolidated Appropriations Act of 2005, severely restricts the disclosure of any part of the contents of the Firearms Tracing System or any information required to be kept by Federal Firearms Licensees pursuant to 18 USC 923(g), or required to be reported pursuant to 18 USC 923(g)(3) and 923(g)(7).

The information provided is for official use only and may not be disseminated outside of law enforcement agencies. The information should not be used for statistical representation without the prior approval of the Chief, National Tracing Center Division. We recommend that you discuss these restrictions with ATF legal counsel prior to disclosing any of the information provided in this correspondence outside of ATF.

(b) (6)

Program Analyst
Law Enforcement Support Branch
ATF National Tracing Center Division

(b) (6)

Fax: (b) (6)

Ex 5

12/4/2007

Copy of Presentation Provided to S&W
on Nov. 16, 2007



Smith & Wesson Inspection

Second Briefing of Inspection Findings
Boston Field Division
Hartford Area Office
November 15, 2007

Variance Violations/Non Compliance

- No current approved variance found for computer record keeping system under active FFL License #6-04-01684 (violation of 27 CFR 478.22).
- Current system does not conform to ATF requirements for computer A&D systems
 - Not all required ATF Acquisition & Disposition information shown or accurately reflected (Date of acquisition, manufacturer, importer, model, type, caliber)
 - **S&W unable to provide A&D record with all required acquisition information during ATF inventories (Name, address and/or FFL number i.e., S&W acquired firearms/frames were not listed, Sigma and M&P lines)**
 - S&W unable to accurately query serial number database for current firearm records
 - S&W unable to accurately reflect firearms in inventory
 - Printout/records reflected non-firearm items (air guns, handcuffs and other merchandise)
 - System not self contained (NFA and some competitor guns maintained off the system)
 - **Administrative difficulties encountered included inaccurate inventory lists provided by S&W, lack of ability to present inventory records in a timely manner and the failure and/or inability to distinguish S&W firearms, (b) (4) firearms in inventory**



902X3

Chronology of Inspection

- Onsite ATF VCIT Compliance Inspection Initiated September 10, 2007
 - inventory samples revealed missing firearms ^{b3 Public Law 112-55 (125 Stat. 552)} of firearms unaccounted for in inventory records provided, firearms shipped out without records, firearms boxed up/shipped during inventory and discovery of S&W failure to report Theft/loss firearms to ATF
- Full ATF Inventory initiated October 1, 2007 – October 4, 2007
 - Firearms located in multiple areas of plant (main vault, long gun vault, assembly area, manufacturing area, engineering room, museum, basement vault, mail receiving area, multiple locations at academy). Issues with scanning/scanners not functioning, manual entries, errors with (b) (4) vs. S&W firearms and multiple separate databases (WIP, OSR, AIP, Guard File ect.). Based on these issues S&W was allowed an extension until October 15, 2007 to reconcile their remaining inventory of missing firearms. S&W failed to have this completed and to have records and/or guns available for inspection as requested. Theft/Loss Reports for these areas were not completed until October 19, 2007.
- Full NFA Inventory initiated October 15, 2007
 - ATF IOIs had requested NFA firearms to be consolidated/produced prior to start of full inventory on October 1, 2007. Box of silencers was discovered in basement vault during full inventory/registration status unknown/some NFA at plant/some at academy/some in museum/NFA records not readily available during commencement of inspection.
- Anti-Personnel ammunition discovered at Academy October 25, 2007
 - Anti-Personnel ammunition used with Gas guns was intermingled with CS/CN Grenades in ammo room at Academy. (b) (6) advised Gas Guns were used with Anti – Personnel ammunition.
- Unaccounted for firearms found in Scrap Area October 31, 2007
 - approx ^{b3 Public Law 112-55 (125 Stat. 552)} guns ^{b3 Public Law 112-55 (125 Stat. 552)} missing, some not in computer
- November 7, 2007 additional unregistered NFA firearms, missing firearms and firearms found in locked room at academy
 - lack of full disclosure and/or knowledge of what they have and where all guns are stored). S&W Academy personnel (BP) claim they have never been in that room, ^{b3 Public Law 112-55 (125 Stat. 552)} missing firearms

2023

S&W Acquisition & Disposition Record – Inventory Violations

Approx b3 Public Law 112-55 (125 Stat. 552) firearms inventoried Oct. 1-Oct.4

➤ A&D approx b3 Public Law 112-55 (125 Stat. 552) Violations/Discrepancies

Discovered (violation of 27 CFR 478.123(a) & 27 CFR 478.123(b))

➤ Approx b3 Public Law 112-55 (125 Stat. 552) unaccounted for serial numbers in A&D record

➤ Approx b3 Public Law 112-55 (125 Stat. 552) Missing Firearms, b3 Public Law 112-55 (125 Stat. 552)
Reported as Theft/Loss Firearms, b3 Public Law 112-55 (125 Stat. 552) Theft/Loss
Reports Filed during period of Sept. 13 thru November 7, 2007 - reconciliation ongoing)

➤ Approx b3 Public Law 112-55 (125 Stat. 552) Firearms not in computer system (off book)

S&W – Inventory/Record Keeping Violations

- S&W Possession of 03 Public Law 112-55 (125 Stat. 552) firearm frames without serial numbers (violation of 27 CFR 478.92(a)(1)(i))
 - Frames were completed firearms and not in the manufacturing process. See Photo 1.
- Issuing Duplicate Serial Numbers (violation of 27 CFR 478.92(a)(1)(i))
 - S&W was issuing duplicate serial numbers as a business practice in violation of federal firearms regulations
- S&W failed to have all records available for inspection, including NFA paperwork and records for firearms manufactured prior to the mid 70's. S&W had donated older firearms records to the CVHS (violation of 27 CFR 478.121(a)).
- S&W also removed 03 Public Law 112-55 (125 Stat. 552) firearms from the active computer system after the filing of a Theft/Loss Report on October 5, 2007. This resulted in ATF required date being no longer visible (make, model, caliber, type). The past history/status also no longer appeared in the system. This prevented ATF IOIs and/or S&W personnel from querying these firearms during the week of 10/16/07 (violation of 27 CFR 478.121(a)). Information was restored the following week.

S&W Failure to Report Theft/Loss

Firearms

- Failure to Report Theft or Loss of firearms (violation of 27 CFR 478.39a)
- S&W failed to Report Theft/Loss Firearms after inventories revealed missing firearms in 2005, 2006, and again in 2007
 - 03 Public Law 112-55 (125 Stat. 552) [REDACTED] firearms were missing after an inventory conducted on or about March 24, 2007, these missing firearms were not reported to ATF as required. ATF IOIs discovered some of these same firearms missing during an ATF Inventory in Sept. 2007
 - 03 Public Law 112-55 (125 Stat. 552) [REDACTED] firearms were missing after an inventory conducted on or about March 25, 2006, these firearms were not reported to ATF as required.
 - 03 Public Law 112-55 (125 Stat. 552) [REDACTED] firearms were missing after an inventory on or about February 2, 2005.

0202

S&W Failure to Report Theft/Loss Firearms Cont.

- Failure to Report Theft or Loss of firearms within 48 hours (violation of 27 CFR 478.39a)
- S&W serial number b3 Public Law 112-55 (125 Stat. 552)
 - **b3 Public Law 112-55 (125 Stat. 552)**
- (b) (4) serial number b3 Public Law 112-55 (125 Stat. 552)
 - **b3 Public Law 112-55 (125 Stat. 552)**
- In other instances S&W was aware of theft/loss firearms in interstate transit and did not timely report to ATF (although not technically a violation it represents b3 Public Law 112-55 (125 Stat. 552) weak internal controls as well as patterns of missing firearms). As an example b3 Public Law 112-55 (125 Stat. 552) firearms were missing on or about May 12, 2006 and not reported to ATF until June 14, 2006. In another instance b3 Public Law 112-55 (125 Stat. 552) (b) (4) firearms were stolen from a shipment/importation on or about June 9, 2006 (a pattern of missing firearms was noted at the time b3 Public Law 112-55 (125 Stat. 552) firearms were stolen from the last 3 shipments). These were not reported to ATF until June 13, 2006.

*S&W shipment/loan of firearms to
Non S&W Employees*

- Missing/Unaccounted for firearms secondary transfers.

S&W failure to respond/Failure to complete Trace Requests

02X3

- NTC queries revealed [REDACTED] hits for the out of a query of the [REDACTED] unaccounted for firearms.

S&W NFA Violations

Ex 20a

- Possession of [REDACTED] Unregistered NFA firearms
(violation of 26 U.S.C. 5861(d) Prohibited Acts)
 - [REDACTED] Short Barreled Shotguns
 - [REDACTED] Silencers
 - [REDACTED] Grenade Launchers/Destructive Devices
 - [REDACTED] Gas Guns/Destructive Devices
 - [REDACTED] Machine Gun receiver (model 76)

- Unlawful transfer of an unregistered/unserialized firearm
(violation of 26 U.S.C. 5861(e))
 - [REDACTED] unregistered/unmarked silencer was transferred to the CT Valley Historical Society in 1998
 - [REDACTED] shot guns registered as SBS transferred to FFL in RI (barrels possibly switched to GCA firearms)

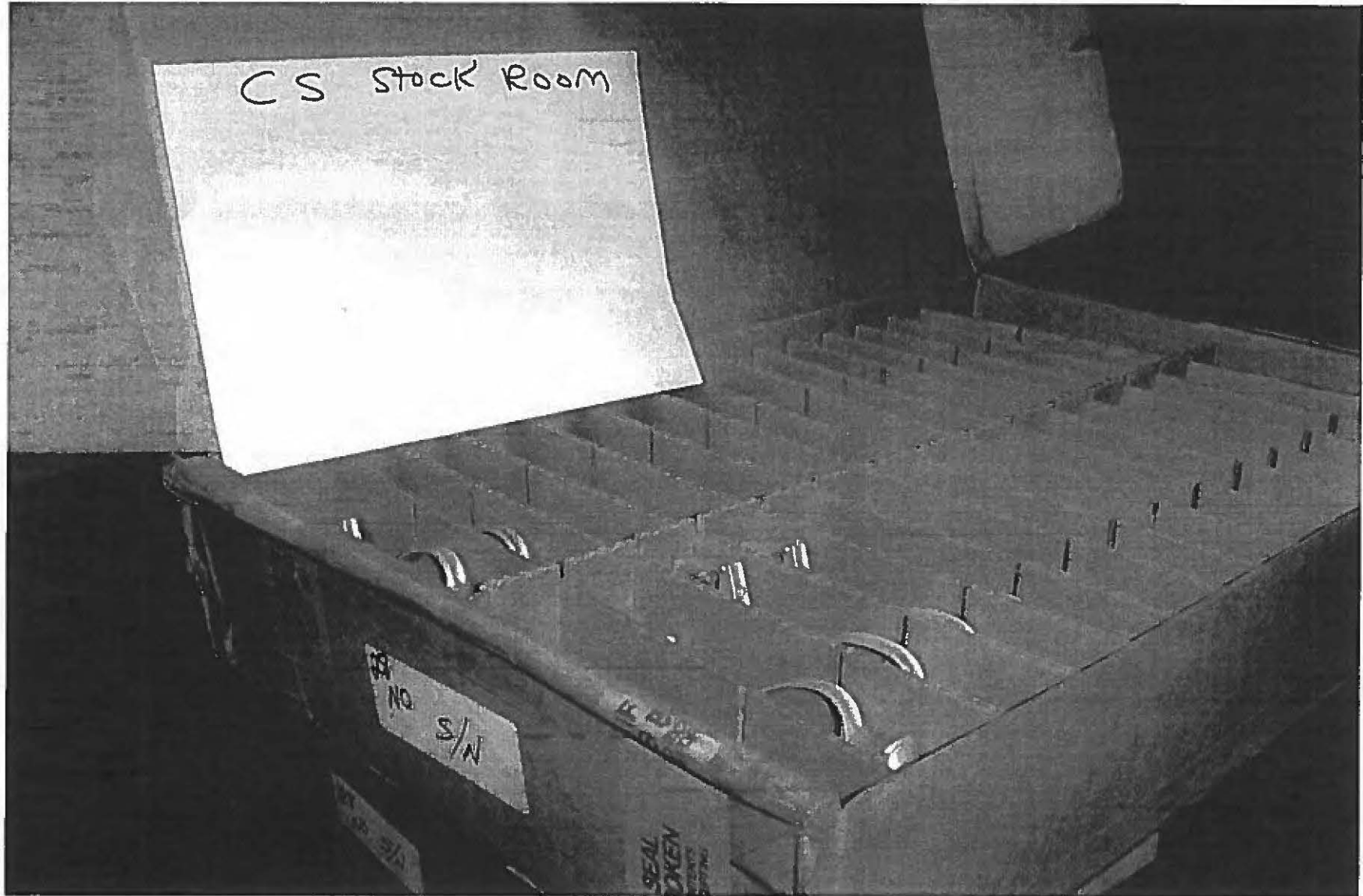
- Failure to maintain proof of NFA firearms registration
(violation of 26 U.S.C. 5841(e))
 - [REDACTED] Silencers possessed without proof of registration
 - [REDACTED] of these silencers were noted as missing during a 1980 inspection

Recommendations/Outstanding Issues

Ex 20a

- b3 Public Law 112-56 (125 Stat. 552) [REDACTED] unaccounted for serial numbers (theft/loss report, S&W extended search of available records, overhaul of records/restoration of serial numbers to active and/or searchable system)
- b3 Public Law 112-56 (125 Stat. 552) [REDACTED] unserialized frames (destroy and or verify markings as required)
- Unserialized/unregistered silencer (surrender, obtain F10,)
- Full accounting for firearms/frames in previously unknown locations (consolidate, destroy, and/or enter into A&D record as required)
- New /updated Computer system

Photo 1 - S&W Unserialized Frames



EX20a

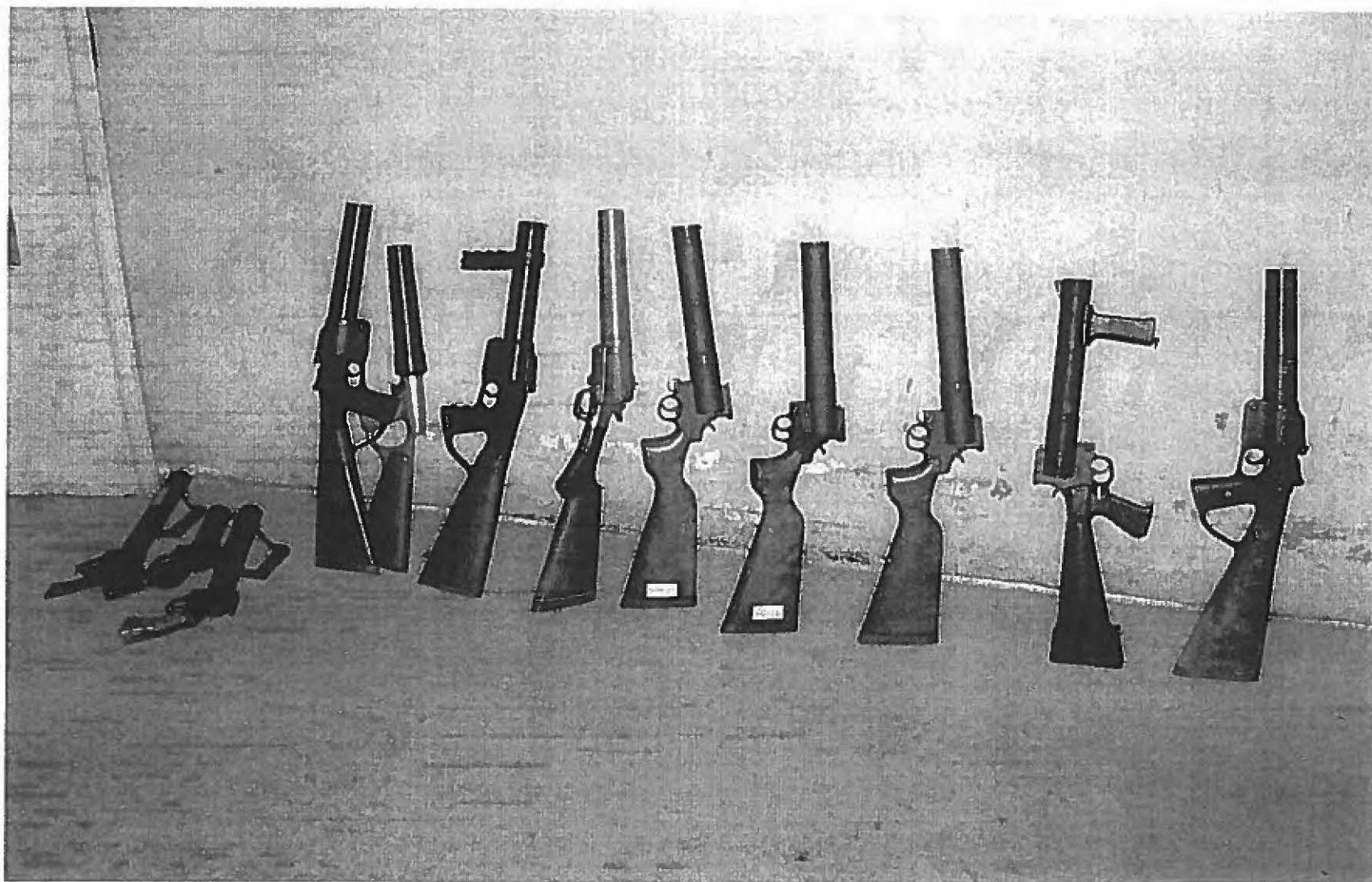
Photo 2 -Unaccounted for Firearms Scrap area

0202X3



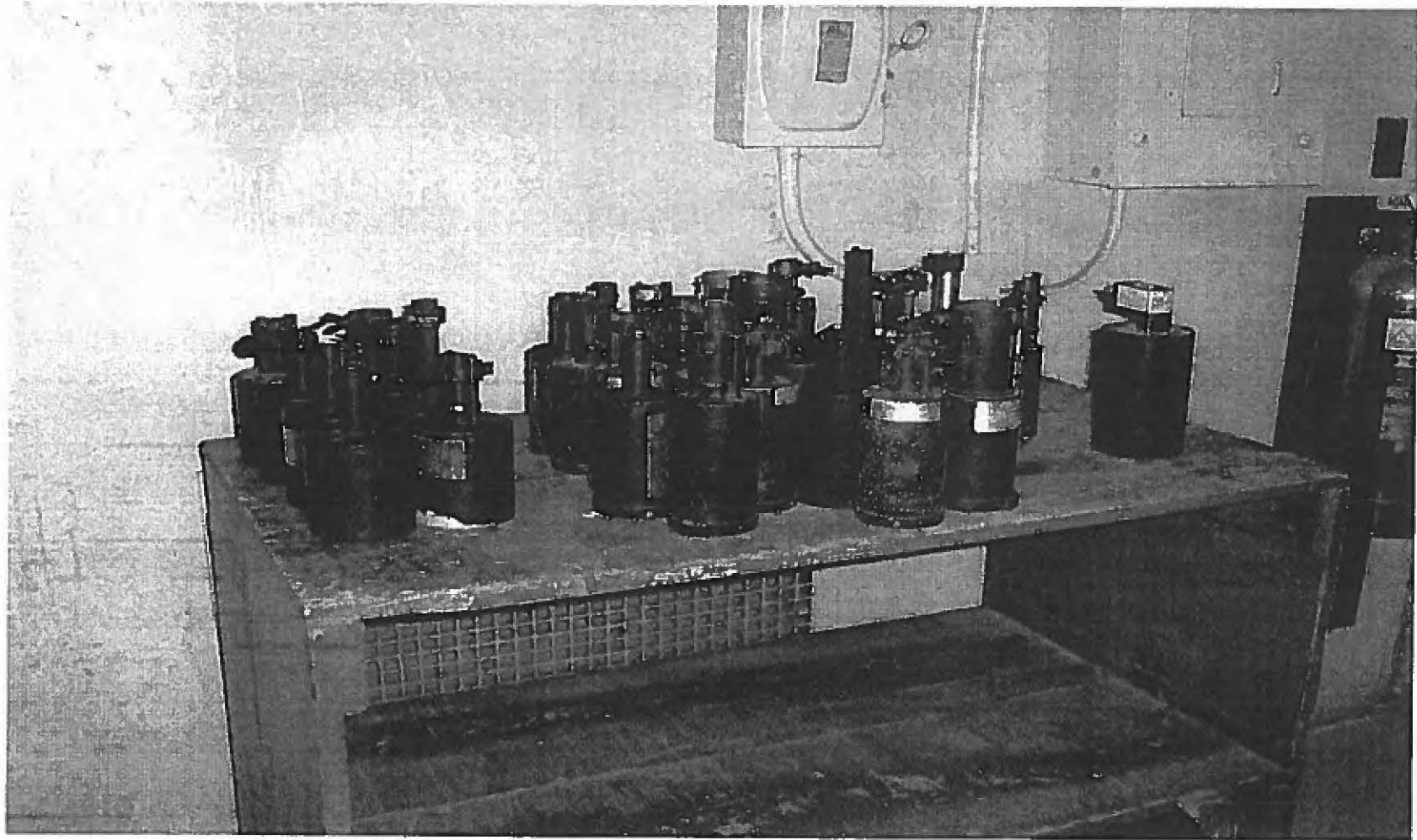
Gas Gun/DD Found at S&W

Ex 200



Grenade Launchers at S&W

EX20a



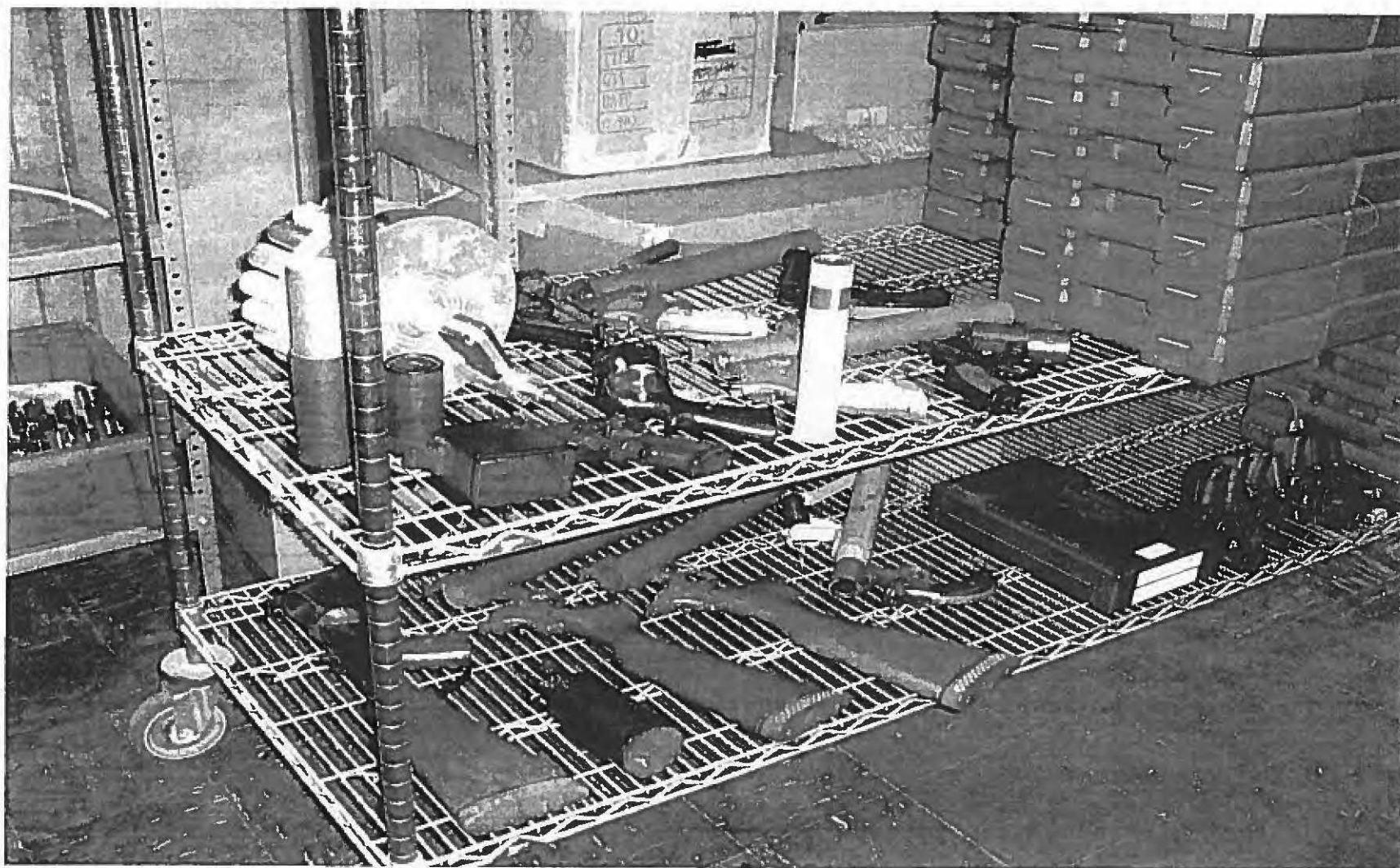
Anti – personnel ammunition at S&W

Ex20a



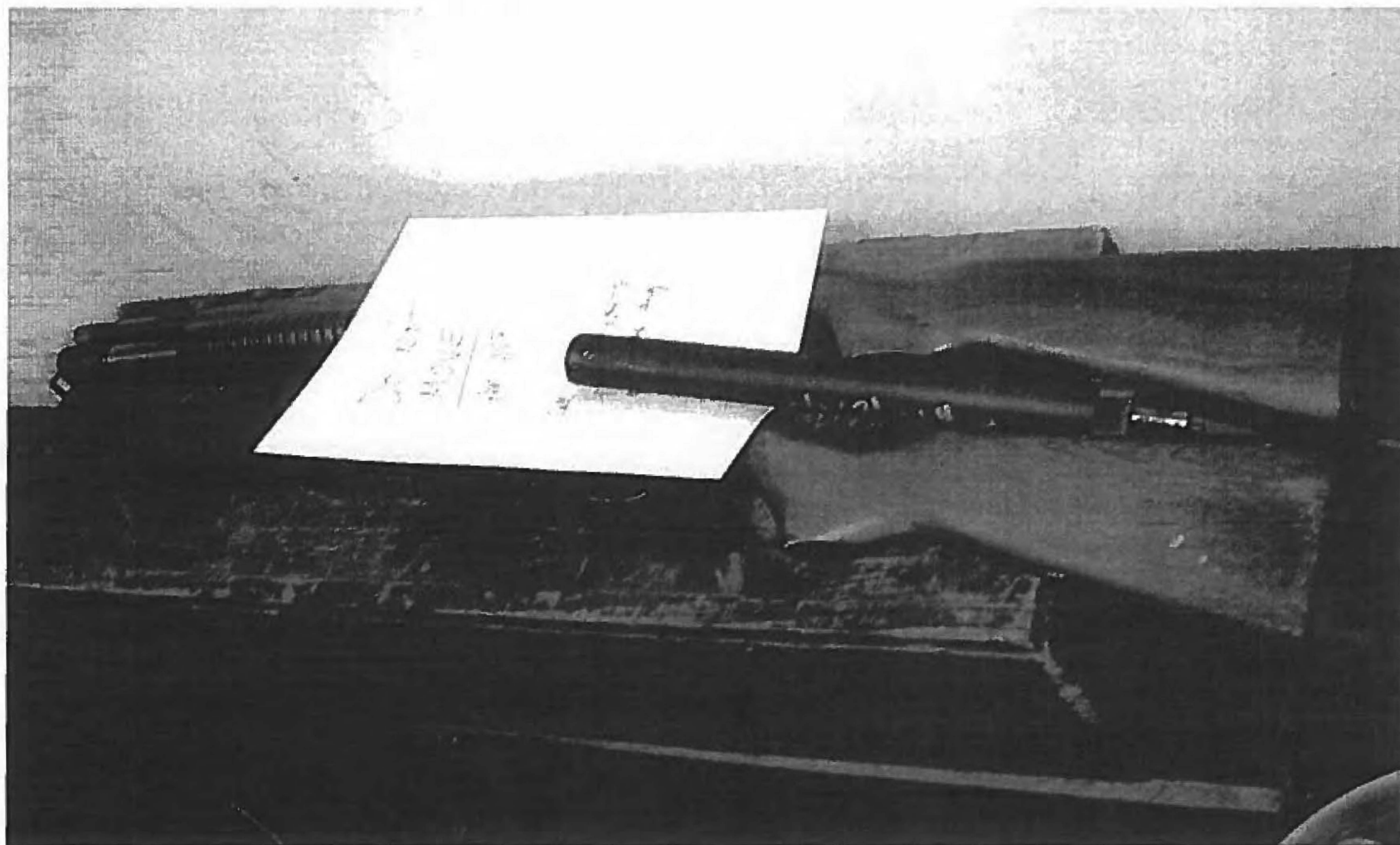
NFA Firearms found 11/7 at S&W

EX20a



*Short Barreled Shotguns/Silencer at
S&W Academy*

EX20a



S&W Transfer of unregistered NFA silencer

EX20a



*Unaccounted for firearms - Locked
Academy Room*

902X3



Unaccounted for firearms - Locked Academy Room

EX20a



90283

Smith & Wesson policy requires

**EVERY FIREARM ENTERING AND EXITING
THIS SECURE AREA BE SCANNED.**

Effective immediately, to assist in full
implementation of the scanning requirement, this
gate will remain locked. If you require entry,
please ask one of the employees in the secure
area.

We appreciate your cooperation.

20

ATF 38 cal INVENTORY FREEZE

**DO NOT ADD OR REMOVE ANY 38
cal REVOLVERS FROM THIS VAULT**

63053
63052
63051
63050

ATTN: INVENTORY FIELD
DO NOT ADD OR REMOVE ANY
REVOLVERS FROM THIS AREA

ATF 38 cal INVENTORY FREEZE

**DO NOT ADD OR REMOVE ANY 38
cal REVOLVERS FROM THIS VAULT**

FIREARMS INSPECTION REPORT

Name: Smith & Wesson Corp.
Trade Name: Smith & Wesson Corp.
Address: 2100 Roosevelt Avenue
Springfield, MA 01104

UI#: 762055-2007-0118
FFL#: 6-04-013-07-8B-01684

1 - Introduction

Inspection Profile:

ATF Industry Operations Investigators (IOIs)
Hartford, CT Area Office

(b)(6)

(b)(6), Boston Field Office
(b)(6), Boston Field Office
(b)(6), West Palm Beach Area Office

ATF Intelligence Specialist
(b)(6)

ATF Special Agents (S/A's)
(b)(6) RAC New Haven Field Office
(b)(6), New Haven Field Office
(b)(6), Springfield Field Office
(b)(6), Springfield Field Office
(b)(6), Trenton Field Office
(b)(6), Buffalo I Field Office
(b)(6), Boston Group IV
(b)(6), Boston Group IV
(b)(6), Flint Field Office

Smith & Wesson (S&W) Persons Interviewed:

Corporate Officers:

(b)(6), President and CEO
(b)(6), Chief Operating Officer
(b)(6), Chief Financial Officer
(b)(6), Corporate Counsel
(b)(6), Vice President – Operations

FIREARMS INSPECTION REPORT

Name: Smith & Wesson Corp. UI#: 762055-2007-0118
Trade Name: Smith & Wesson Corp. FFL#: 6-04-013-07-8B-01684

(b)(6), Director of Information Technology
(b)(6), Vault/Shipping Manager
(b)(6), Chief of Security
(b)(6), Plant Manager
(b)(6), Compliance Manager
(b)(6), Customer Service Manager
(b)(6), Tech Support Manager
(b)(6), IT
(b)(6), S&W Shooting Sports Center Training Coordinator
(b)(6), ATF Tracing
(b)(6), Scrap Room
(b)(6), ISO Auditor
(b)(6), Accounting
(b)(6), Long Gun/(b)(4)
(b)(6), Director of Distribution
(b)(6), Manager S&W Retail Store

Period of Inspection:

Onsite Inspection Dates:

September 10, 2007 – February 20, 2008

Full Inventory Dates: October 1, 2007 – October 4, 2007

Initial Presentation of Violations to S&W at BFD: November 16, 2007

Closing conference: Scheduled for June 2, 2008

Purpose of Inspection:

VCIT Inspection (City of Hartford, CT)/Full Compliance.

No advance notice given.

Business Profile:

Smith & Wesson (herein referred to as S&W) is one of the largest manufacturers of handguns in the United States. In recent years S&W has also expanded into the long gun market, manufacturing rifles as well as shotguns. S&W (b)(3)- Public Law 112-55 (125 Stat. 552)

(b)(3)- Public Law 112-55 (125 Stat. 552)


S&W has manufacturing facilities in Springfield, MA as well as in Houlton, Maine. S&W is a publicly traded company (NASDAQ, symbol SWHC) with its headquarters in Springfield, MA. S&W has approximately 832 full time employees. See Exhibit 1. S&W in January 2007 completed an acquisition of firearms manufacturer (b)(4)

FIREARMS INSPECTION REPORT

Name: Smith & Wesson Corp.
Trade Name: Smith & Wesson Corp.

UI#: 762055-2007-0118
FFL#: 6-04-013-07-8B-01684

(b)(3)- Public Law 112-55 (125 Stat. 552), (b) (4)



For the 12 month period October 2006 – September 2007, S&W manufactured approximately (b)(3)- Public Law 112-55 (125 Stat. 552) firearms. Of these firearms, approximately (b)(3)- Public Law 112-55 (125 Stat. 552) were long guns. See Exhibit 2. Based on this information greater than (b)(3)- Public Law 112-55 (125 Stat. 552) of S&W production consists of handguns. S&W reported (b)(3)- Public Law 112-55 (125 Stat. 552) firearms as being sold during this same time frame. The vast majority of firearms in inventory were new firearms. S&W had a small amount of used guns on the premises (estimated at less than (b)(3)- Public Law 112-55 (125 Stat. 552) of firearms on hand).

No sales were reported to individuals under S&W's manufacturing license (per (b) (6), S&W Compliance Manager). S&W indicated sales to non-licensees are made through the retail store/dealer's license only.

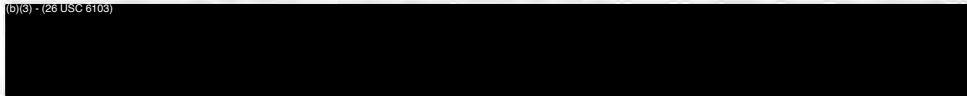
This assignment was originally issued under S&W manufacturer's license (FFL# 6-04-013-07-1B-01684, expires February 2011). S&W also holds a separate importer's license for the main plant in Springfield, MA (FFL#6-04-013-08-1B-01685, expires February 2011). During the course of the inspection S&W's importing activities were also examined.

S&W holds licenses at two other locations. S&W currently has a dealer's license for a retail store located at 299 Page Boulevard, Springfield, MA

FIREARMS INSPECTION REPORT

Name: Smith & Wesson Corp. **UI#:** 762055-2007-0118
Trade Name: Smith & Wesson Corp. **FFL#:** 6-04-013-07-8B-01684
01104 (FFL#6-04-013-01-8B-01683), as well as a manufacturer's license
for their plant in Houlton, ME (FFL#6-01-003-07-1B-00748). These
licenses also expire in February 2011.

(b)(3) - (26 USC 6103)



PRE-INSPECTION INTELLIGENCE

(b)(3)- Public Law 112-55 (125 Stat. 552), (b) (7)(E)

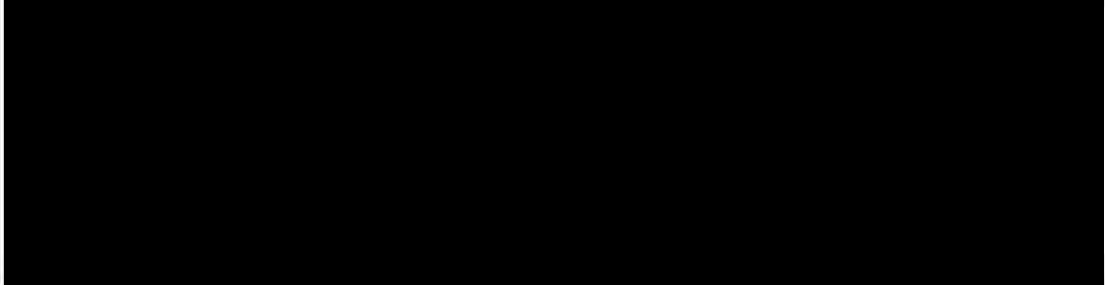


FIREARMS INSPECTION REPORT

Name: Smith & Wesson Corp.
Trade Name: Smith & Wesson Corp.
Exhibit 9.

UI#: 762055-2007-0118
FFL#: 6-04-013-07-8B-01684

(b)(3)- Public Law 112-55 (125 Stat. 552), (b) (7)(E)



Ownership & Control:

Smith & Wesson (S&W) is a publicly owned company. The current executive team at S&W has been in place since approximately 2005. The current list of Directors and Officers is attached. See Exhibit 11. There were no material differences/changes between the officers listed in Exhibit 11 and Federal Licensing System (FLS). See Exhibit 12.

Variance:

(b)(3)- Public Law 112-55 (125 Stat. 552)



FIREARMS INSPECTION REPORT

Name: Smith & Wesson Corp.
Trade Name: Smith & Wesson Corp.

UI#: 762055-2007-0118
FFL#: 6-04-013-07-8B-01684

(b)(3)- Public Law 112-55 (125 Stat. 552)



2 – Recommendation REVOCATION.

An onsite compliance inspection was conducted at Smith & Wesson from September 10, 2007 through February 20, 2008. S&W was cited for 13 violations of federal firearms laws and regulations under the Gun Control Act of 1968.

Among the violations discovered during the course of the compliance inspection was that S&W was known to be missing firearms after their annual inventories conducted in 2005, 2006 & 2007. S&W failed to report these missing firearms to ATF as required by Federal Firearm Laws and Regulations. S&W is aware of the requirements to report missing firearms to ATF, yet repeatedly failed to do so. (b)(3) 112 Public Law 55 125 STAT 552

FIREARMS INSPECTION REPORT

Name: Smith & Wesson Corp. UI#: 762055-2007-0118
Trade Name: Smith & Wesson Corp. FFL#: 6-04-013-07-8B-01684

(b)(3) 112 Public Law 55 125 STAT 552 During the course of the compliance inspection (b)(3) 112 Public Law 55 125 ST
firearms were reported as Theft/Loss firearms. In addition (b)(3) 112 Public Law 55 125 firearms
were not entered into the Acquisition and Disposition Record.

S&W also had a file of (b)(3) 112 Public Law unaccounted for serial numbers that S&W
originally claimed they did not manufacture. Further investigation by IOIs
revealed that S&W manufactured at (b)(3) 112 Public Law 55 125 ST of these firearms. In addition,
there were additional records available at S&W for (b)(3) 112 Public Law 55 125 STAT of these
firearms. (b)(3) 112 Public Law 55 125 STAT 552

(b)(3) 112 Public Law 55 125 STAT 552

Following the discovery of these violations, a meeting was held with S&W on
November 16, 2007, where S&W was informed of the violations discovered
during the inspection. Subsequent to this meeting IOIs found that S&W was
continuing to operate in violation of Federal Firearms Laws and Regulations and
had failed to correct all of their deficiencies. These violations included the
continued failure to report theft/loss firearms within 48 hours to the ATF. S&W
was also found to have not corrected their A&D record to reflect all required
firearm information. S&W had also failed to initiate a reconciliation of the
(b)(3) 112 Public Law unaccounted for serial number file until IOIs directed S&W to do so. In
addition S&W was found to still be missing firearms after their annual inventory
in February 2008. S&W has an ongoing lack of control over their firearms
inventory.

The attached report contains additional information regarding S&W's violations
of Federal firearms laws and regulations that were discovered during the
inspection.

The attached report and exhibits do not contain all the documentary evidence
gathered in support of the violations during the course of the investigation.

3 – Inspection History

- March 2005
 - No inspection (assignment issued under old/expired dealer's
license #6-04-00470, UI#762055-2004-0123, cancelled per
A/S).
- November 2002
 - Inspection conducted for Large Capacity Magazine issue
under FFL#6-04-00468, UI#762055-2001-0200. No
violations/no further action.
- January 2002
 - No inspection. Private letter ruling/FAET issue
(UI#762055-2001-00051)

FIREARMS INSPECTION REPORT

Name: Smith & Wesson Corp.
Trade Name: Smith & Wesson Corp.

UI#: 762055-2007-0118
FFL#: 6-04-013-07-8B-01684

- **March 2000**
 - **FAET inspection only.**
- **May 2000**
 - **Compliance inspection under S&W dealer's license, FFL #6-04-36714, Page Blvd location, UI#762055-2000-0275. No violations.**
- **August 1993**
 - **Directed compliance inspection under FFL#04-10395, UI#930080 related to loaned firearms for writers/evaluators. No violations noted, no further action.**
- **November 1989**
 - **Last Compliance Inspection under manufacturer's license, no violations cited.**

4 - Internal Controls Evaluation

ATF IOIs determined that there were material weaknesses in Smith & Wesson's internal controls. This was evidenced by the fact that S&W had to file Theft/Loss Reports for (b)(3) 112 Public Law 55 125 ST firearms during the course of the inspection. It was also determined that (b)(3) 112 Public Law 55 125 firearms were also not entered into the Acquisition and Disposition Record Book (A&D Record) as required by Federal firearm laws and regulations (Off Book firearms). S&W's computer system also could not provide an accurate accounting of firearms that were on hand.

In addition to these inventory problems, S&W also had (b)(3) 112 Public Law 55 125 STAT 552 serial numbers that were unaccounted for in their "Old Wip file". S&W initially stated to ATF that these serial numbers/firearms were not manufactured into firearms. See Exhibit 16. IOIs through further investigation determined that there were records available at S&W which indicated that (b)(3) 112 Public Law 55 125 ST of these serial numbers were in fact manufactured into firearms. In addition, there were records available in bound books for (b)(3) 112 Public Law 55 125 STAT of these firearms.

(b)(3) 112 Public Law 55 125 STAT 552

ATF IOIs also noted that S&W in many instances were not following their own internal control procedures. This was particularly evident in their repeated failure to report Theft/Loss Firearms to the ATF. IOIs found that S&W was aware they were missing firearms as far back as 2006 that were never reported to

FIREARMS INSPECTION REPORT

Name: Smith & Wesson Corp.
Trade Name: Smith & Wesson Corp.
ATF as required.

UI#: 762055-2007-0118
FFL#: 6-04-013-07-8B-01684

Based on the seriousness of the violations that were discovered, including the number of missing and unaccounted for firearms, S&W was requested to attend a meeting at the Boston Field Division Office to meet with senior ATF officials, including the Special Agent in Charge for the Boston Field Division, the Acting Director of Industry Operations, the Hartford, CT Area Supervisor, Boston ATF Division Counsel and members of the inspection team. **See Exhibit 19.**

On November 16, 2007, S&W was formally advised by ATF of the significant violations discovered during the inspection and advised that they needed to make significant strides in addressing these issues and the lack of control over their firearms. S&W was provided a copy of a report at that time, which detailed their specific violations and problems encountered at S&W during the inspection. **See Exhibit 20.** IOIs in continuing the inspection after this meeting found that S&W had failed to address many of the issues and continued to operate in violation of Federal firearm law and regulations even after this meeting. The ongoing issues and problems at S&W are discussed in this report.

S&W attendees at this meeting included (b) (6), President, (b) (6), (b) (6), Vice President, (b) (6), Director of IT, (b) (6), Corporate Counsel and (b) (6), Compliance Manager, (b) (6), Outside Counsel for S&W.

5 - Acquisition & Disposition (A&D) Record – Inventory

On September 10, 2007, ATF IOIs (b) (6) arrived unannounced at the S&W factory located at 2100 Roosevelt Avenue, Springfield, MA to initiate the compliance inspection. IOIs initially met with members of the S&W Security Department to advise them of the inspection and any security procedures that should be followed. IOIs established that team members would check in at the main security gate house to receive day passes and visitor ID tags. Physical security measures and procedures were reviewed with S&W Security Officer/Springfield Special Police Officer (b) (6). Officer (b) (6) reviewed perimeter security as well as internal security measures at S&W. It was noted that visitors were signed in at the main security gate house where visitors must pass through a metal detector. Firearms possessed and brought in by visitors are checked into the guard house and signed into the "Guard File". See also Exhibit 37 for more detail regarding the guard file. S&W utilizes the guard file to account for firearms physically brought into the plant by visitors and employees through the main gate. After initial screening, visitors as well as S&W employees enter the S&W facilities building through a main lobby where a second metal detector is located and staffed by S&W security. IOIs noted that there were additional metal detectors located outside the revolver and long gun assembly areas.

FIREARMS INSPECTION REPORT

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UI#: 762055-2007-0118
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Security problems noted included S&W leaving their main vault unlocked and that a large number of firearms were being stored outside of the vault. Security personnel identified these two items to ATF as security concerns that had been brought to the attention of S&W management but had remained uncorrected. The practice of leaving the vault unsecured was resolved during the first week of the ATF inspection, after IOIs discovered missing firearms. See **Exhibit 20a**.

After meeting with the security department IOIs were introduced to compliance department personnel, including S&W Compliance Manager (b) (6), as well as S&W compliance personnel (b) (6). After initial introductions IOIs informed the compliance department that an ATF Inspection was being initiated at S&W and would be commencing immediately. IOIs requested a tour and overview of the operations at S&W to start the inspection process. A tour was provided by Compliance Manager (b) (6). (b) (6) gave an overview of the manufacturing plant and operations, including initial receiving areas, mail room, repair center, pistol and revolver assemblies, long gun assembly area, main vault, long gun vault, and shipping areas. (b) (6) introduced IOIs to the main personnel within each of the relevant areas.

During the course of this tour, ATF IOIs sampled firearms in inventory to compare to the A&D record in order to test S&W's compliance procedures and to determine whether the computerized A&D record was being maintained correctly. During this exercise IOIs found that S&W was failing in some instances to record all required A&D information into their A&D computer system. This included the failure to record and/or incorrectly recording the acquisition date, firearm manufacturer, model, caliber and type. These discrepancies are listed on Worksheet 1A. A sample print out of the A&D errors discovered is also attached as an example. See **Exhibit 21**. These deficiencies were brought to the attention of S&W Compliance Manager (b) (6) and Receiving Manager (b) (6). They were advised to correct their records as soon as possible. (b) (6) was also reminded of the record keeping requirements of manufacturers and importers under 27 CFR 478.122 & 123 and that the information is also required under their computer variance as authorized under 27 CFR 478.22.

S&W was cited for this violation under 27 CFR 478.123(a). See the attached Report of Violations (ROV), violation #8.

Corrective Action:

S&W was formally notified of this violation during the November 16, 2007 meeting. See Exhibit 20.

SEPTEMBER 2007 INVENTORY

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IOIs (b) (6) were provided with a current list of S&W and (b) (4) with relevant product SKU numbers. IOIs selected firearm samples from various S&W product lines for inventory purposes. Included within the inventories were targeted samples concentrated on S&W firearms that appear most often as crime gun traces. IOIs requested that computer inventories be provided to the inspection team with all ATF required Acquisition and Disposition data. See Exhibit 22. This initial inventory list was requested on September 10, 2007, and provided the following day; it contained approximately (b) (6) firearms.

IOIs determined that this initial inventory printout provided by S&W was missing ATF required A&D information. S&W failed to list whom firearms were acquired from (manufacturer) in (b) (3) 112 Public Law 55 125 STAT 552 instances out of the initial inventory of (b) (6) firearms. A sample of the inventory printout is included in this report showing the missing data. See Exhibit 23. IOIs later examined disposition information from S&W and found that the licensee was not recording the manufacturer of their firearms at the time of disposition as well ((b) (4)). In an examination of the A&D record provided covering the time frame of August 1, 2007 through September 20, 2007, the licensee failed to list the manufacturer in (b) (3) 112 Public Law 55 125 STAT 552 instances. Additionally, in (b) (3) 112 Public Law 55 125 STAT 552 instances the licensee failed to record the type, caliber and/or FFL number in the A&D record as required. A sample of the disposition errors is attached. See also Exhibit 23.

S&W was cited for this violation under 27 CFR 478.123(a). See attached ROV, violation #8.

Corrective Action:

S&W was formally notified of this violation during the November 16, 2007 meeting. See November 16, 2007 report (Exhibit 20).

S&W Failure to Correct and/or timely respond:

On January 18, 2008, as a follow up to this violation, ATF IOIs (b) (6) and (b) (6) interviewed Compliance Manager (b) (6) to determine if these violations had been corrected. (b) (6) informed ATF IOIs that S&W had fixed the computer system to indicate from whom firearms/frames were acquired from. IOIs randomly selected firearms and determined that this violation had not been corrected. See Exhibit 23a.

In January 2008, ATF IOIs (b) (6) discovered an additional (b) (3) 112 Public La imported (b) (4) that also did not have the acquired from/manufacturer information listed in the A&D record as required. A sample printout of the A&D is attached. See Exhibit 23b.

S&W was cited under 27 CFR 478.122(a) for approximately (b) (3) 112 Publi instances

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of failing to list the manufacturer and country of manufacturer for imported firearms. See the attached ROV, violation #7.

While comparing the (b) (4) referenced above to the A&D records, it was noted that the licensee also failed in approximately (b)(3)- Public Law 112-55 (125 Stat. 552) instances to timely enter and/or entered incorrect dates of acquisition into the A&D record. While examining the A&D record the IOIs noted that in some cases S&W failed to enter the (b) (4) into their A&D record for almost two years after the firearms were imported. In addition, there were instances firearms were entered into the A&D record months before they were actually imported. These violations were discovered by comparing Import documents (ATF Form 6 and 6a's) to S&W's A&D record. Sample printouts of the A&D record and ATF F6a highlighting these violations are attached. See Exhibit 23c.

S&W was cited for the above violations under 27 CFR 478.122(a) on the attached ROV for (b)(3) 112 Public Law 55 125 STAT 552 instances of failing to enter and/or entering incorrect acquisition dates into their A&D record. See attached ROV, violation #7.

On September 11, 2007, IOIs (b) (6) initiated sample inventories of S&W firearms including (b) (4) .38's, 357's and 9mm model firearms. The sample inventories revealed missing firearms from the .38 caliber inventory. A physical inventory was conducted by using S&W's computer inventory list compared to actual firearms in inventory. Discrepancies were noted and provided to S&W during the course of the inventories to account for missing firearms and firearms that were not scanned into the vault.

Based on these missing firearms, IOIs requested that S&W hold their inventory of .38 caliber firearms in order to conduct a full inventory. S&W Compliance Manager (b) (6), as well as the S&W Vault Manager (b) (6), agreed to freeze the .38 caliber firearms. See Exhibit 24. The full .38 caliber inventory results, as detailed below, showed that S&W was missing firearms and was not able to produce an accurate inventory of firearms on hand.

Inventory results of .38 caliber revolvers:

It was determined that there were (b)(3)- Public Law 112-55 (125 Stat. 552) .38 caliber revolvers missing during the ATF inventory. S&W employees were directed to search for the firearms and/or check dispositions to locate the missing guns. A Theft/Loss report was obtained after S&W failed to account for the missing firearms. See Exhibit 25. The A&D printouts are also attached to the T/L reports, which show that the firearms, according to the records, should have been in the vault. In addition to the missing firearms IOIs discovered that S&W had (b)(3) 112 firearms bound for

(b)(3)- Public Law 112-55 (125 Stat. 552)

(b)(3)- Public Law 112-55 (125 Stat. 552) See Exhibit 26. There also

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were (b)(3) 112 F .38 caliber firearms located in the physical vault inventory that had not been scanned and were not reflected in the on hand inventory provided to ATF. See Exhibit 27.

On September 14, 2007, another inventory of .38 caliber revolvers was conducted to account for all guns on hand, including any in a "shipping" status that were still onsite. S&W was again unable to account for all firearms on hand. (b)(3) 112 Public Law 55 125 STAT 552, .38 caliber firearms found in the shipping area, were not in the inventory record provided. See Exhibit 28. IOIs compared all (b)(3)- Public Law 112-55 (125 Stat. 552) firearms to the S&W A&D record and determined that all were incorrectly listed as being shipped out of S&W on September 12, 2007, but were still onsite. A sample A&D printout is attached for (b)(3)- Public Law 112-55 (125 Stat. 552) of these firearms. See Exhibit 29.

Approximately (b)(3)- Public Law 112-55 (125 Stat. 552) firearms were inventoried during the course of the S&W .38 caliber examination.

Based on the inventory problems encountered, additional Investigator resources were requested for the second week of the S&W inspection. ATF IOIs (b)(6) and (b)(6) from the Boston V Field Office joined the inspection team at S&W the second week. At that time the inventory was expanded to include Sigma firearms as well as all .357 caliber revolvers on hand at S&W. The second and third inventories also revealed missing firearms as well as inaccurate computer records of firearms on hand.

Inventory results of Sigma line:

The initial inventory list provided to ATF on September 18, 2007, was for approximately (b)(3)- Public Law 112-55 (125 Stat. 552) firearms. IOIs inventoried an additional (b)(3) 112 Sigma firearms that were not on the original list provided. It was determined that there were (b)(3) missing Sigma firearms that were not accounted for in the physical inventory at S&W. According to the A&D record these firearms should have been on hand. IOIs inventoried approximately (b)(3)- Public Law 112-55 (125 Stat. 552) Sigma firearms.

Inventory results of .357 caliber revolvers:

On or about September 19, 2007, ATF IOIs commenced a 100% inventory of .357 caliber revolvers at S&W. Numerous difficulties were encountered during this phase of the inventory, including the discovery of additional missing firearms, firearms found in inventory, but not on the inventory list provided by S&W, as well as firearms being moved about and shipped during the course of the ATF inventory. Firearms found in the vault but not in the vault inventory are documented on the attached A&D screen prints. See Exhibit 30. Firearms that were boxed up and/or shipped out during the ATF inventory are also attached. See Exhibit 30a. At S&W's instruction, firearms were boxed up and shipped out during the IOIs physical inventory. This required IOIs to open boxes of firearms to find those missing. (b)(6) was interviewed as to why firearms were boxed up and shipped out during the inventory, his only response

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was that he "had to do it". IOIs never received any other explanation.

Approximately (b)(3)- Public Law 112-55 (125 Stat. 552) firearms of the .357 caliber revolver line at S&W were inventoried. After opening boxes and attempting to locate missing firearms IOIs were still unable to account for (b)(3)- Public Law 112-55 (125 Stat. 552) missing .357 caliber firearms, in addition to (b)(3)- Public Law 112-55 (125 Stat. 552) missing Sigma firearms.

S&W personnel were instructed to report these (b)(3)- Public Law 112-55 (125 Stat. 552) missing Sigma and .357 caliber firearms as Theft/Losses. See Exhibit 31. The A&D printouts are attached to the Theft/Loss Reports showing these firearms should have been in the vault but were unaccounted for during the ATF inventory. S&W was also instructed to continue to look for the missing firearms after the report was filed. Following the reporting of these firearms, IOIs discovered (b)(3)- Public Law 112-55 (125 Stat. 552) additional missing .357 caliber firearms and had these reported as well. See Exhibit 31a.

Failure to search for missing firearms and firearm transfers off book:
On September 24, 2007, IOIs returned to S&W and learned that they had failed to assign anyone to look for the missing guns as requested. IOIs spoke with (b)(6) (b)(6), Chief of Security for S&W and learned that (b)(6) had failed to inform him of the missing firearms. IOIs had previously requested and had been informed by S&W that they would notify security of the issue of missing firearms so that their staff could attempt to locate the missing guns as well.

In further follow up to the missing firearms IOI (b)(6) contacted the ATF National Tracing Center (NTC) to check on any hits or recoveries for the Theft/Loss Firearms reported to date. In doing so it was discovered that some of

(b)(3)- Public Law 112-55 (125 Stat. 552)

(b)(3)- Public Law 112-55 (125 Stat. 552) IOIs ultimately determined that S&W shipped (b)(3)- Public Law 112-55 (125 Stat. 552) firearms to the FFL in March 2007, without recording the disposition in their A&D records. S&W in fact could not produce a commercial document for this transaction either. The above issues were all reported to the Hartford, CT Area Supervisor. See Exhibit 32. Copies of the A&D records were obtained showing these (b)(3)- Public Law 112-55 (125 Stat. 552) firearms as being still in the vault and/or lost/stolen. See Exhibit 33.

(b)(3)- Public Law 112-55 (125 Stat. 552)

S&W FAILURE TO REPORT MISSING FIREARMS:

Following the above inventories, ATF IOIs learned through a conversation with (b)(6) that S&W was missing firearms after their annual inventory was conducted in March 2007. A list was obtained from the S&W IT Department of (b)(3)- Public Law 112-55 (125 Stat. 552) firearms that were missing in March 2007. See Exhibit 34.

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Prior to the ATF inspection these firearms were never reported as Theft/Loss firearms as required by Federal Firearm laws and regulations. The list of missing firearms had been requested from (b)(3) 112 Public Law 55 125 STAT 552 but had not been provided. IOIs inquired as to whether anyone from S&W had followed up on these missing firearms, however, S&W could not provide any documentation that the firearms had been located or accounted for. During the September –

(b)(3)- Public Law 112-55 (125 Stat. 552)

Further investigation into missing and unreported Theft/Loss firearms at S&W revealed that S&W was also missing firearms after they conducted their own internal inventories in 2005 and again in 2006. These were also not reported as Theft/Loss firearms as required by Federal firearm laws and regulations.

S&W could not produce any documentation that anyone looked for or accounted for the firearms that were missing after March 2006 or 2005. Firearms known to be missing back in 2006 were among the missing firearms discovered by IOIs during the current ATF inspection. These firearms are also highlighted on the attached S&W missing gun list from 2006. See Exhibit 36. Firearms listed as missing in 2005 are also attached. See Exhibit 36a.

IOIs established that S&W was aware of the requirement of Federal Firearm laws and regulations to report missing firearms to the ATF within 48 hours of discovery. This was shown by S&W filing Theft/Loss reports in past instances when they were missing firearms. See Exhibit 36b. IOIs also obtained a copy of an internal S&W document dated August 2004 entitled, "BATF LOST FIREARMS" as authorized by (b) (6), which outlines theft/loss reporting procedures under Federal regulations, including the requirement to report missing firearms within 48 hours of discovery. See Exhibit 36c. ATF has been clear in other communications to the industry that firearms must be reported as theft/losses within 48 hours as outlined in the attached letter to Beretta. See Exhibit 36d.

S&W was cited for failing to Report Theft/Loss firearms as required by 27

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CFR 478.39a. See the attached ROV, violation #2.

Corrective Action:

IOIs referred S&W's failure to report missing firearms as detailed above to ATF Supervisors, as well as to ATF Criminal Enforcement. (b) (6), (b) (7)(C)
(b) (6), (b) (7)(C)

Multiple interviews with S&W employees, including available executives, were conducted regarding missing firearms at S&W. IOIs reported the results of these interviews, as well as difficulties encountered with the inspection to ATF Supervisor (b) (6) for his review on September 27, 2007. See Exhibit 37.

From the above interviews IOIs determined that S&W was unable to provide a full accounting for the firearms that were missing in March 2007. On September 27, 2007, ATF IOIs obtained a Theft/Loss Report for (b) (3) of these missing guns and directed S&W to continue looking for the remaining firearms. The Theft/Loss report for these (b) (3) guns is attached. See Exhibit 38. (b) (6) acknowledged on this form that firearms were not reported within 48 hours by entering the discovery date of the theft/losses as March 24, 2007.

Additional Corrective Action:

S&W was formally notified of this violation during the November 16, 2007 meeting. See November 16, 2007 report (Exhibit 20).

S&W Failure to Correct this Violation:

IOIs discovered that S&W violations regarding the failure to report missing firearms as Theft/Loss firearms to ATF within 48 hours of discovery were ongoing after the November 16, 2007 S&W meeting with ATF.

In November 2007, and again in January 2008, S&W was missing firearms and failed to report these as Theft/Loss Firearms within 48 hours of discovery. IOIs obtained emails and theft/loss reports from S&W employee (b) (6) that documents this ongoing violation. See Exhibit 39. One of the emails in fact documents that (b) (6) was informed of a missing firearm on November 16, 2007, the very day of the meeting with ATF. (b) (6) failed to report this missing firearm to ATF until January 28, 2008, in clear violation of the requirement to report missing firearms to ATF within 48 hours. The November 16, 2007, email clearly states that the firearm can not be located. The email

(b)(3)- Public Law 112-55 (125 Stat. 552)

ATF IOIs made another referral to ATF Criminal Enforcement in February 2008 regarding Smith & Wesson's ongoing and uncorrected violations of Federal Firearm laws and regulations. (b) (6), (b) (7)(C)

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ATF FULL INVENTORY AT S&W

On September 26, 2007, ATF Area Supervisor (b) (6) and the inspection team held a meeting with S&W Executives, including (b) (6) and (b) (6), as well as S&W Managers (b) (6) and (b) (6). ATF Area Supervisor (b) (6) and the inspection team members held this meeting to discuss the inventory problems at S&W, as well as to inform S&W that ATF would be commencing a 100% inventory of all firearms on hand. IOIs informed the executives of the issue of missing firearms, as well as the discovery that S&W was missing guns in March 2007 and failed to report this to ATF. S&W executives were informed of the ongoing difficulties encountered during the inspection, including actions taken by S&W employees that interfered with IOIs activities during the inspection. This included the boxing up and shipping of firearms during the ATF inventory.

Based on these difficulties, and the number of discrepancies, ATF requested at this meeting that S&W place their firearms inventory on hold during the course of the full inventory. IOIs advised S&W that the full inventory would be conducted the week of October 1, 2007.

Prior to the start of the inventory it was requested that S&W consolidate their inventory and segregate the NFA firearms in order to assist ATF with the inventory process. S&W voluntarily agreed to hold their inventory of firearms and to assist with the inventory by providing S&W personnel with hand held scanners to conduct the inventory. The ATF inspection team, consisting of ten IOIs, were each assigned to various areas of the plant (such as main vault, long gun vault, Assembly In Process (AIP), repair and customer service). IOI (b) (6) directed assigned team members to supervise the inventory in their area and to ensure that S&W employees were properly scanning each firearm and inputting the information into the computer. The teams were advised to report any issues or difficulties with the inventory for follow up with S&W managers. During the course of the inventory, IOIs (b) (6) cross checked the inventory results from each area to ensure that scanners were recording the firearms in inventory for eventual comparison to the S&W computer A&D System. The computer A&D system and comparison was run by S&W IT Director (b) (6) (b) (6) who provided the inventory results.

FULL INVENTORY RESULTS

During October 1, 2007 through October 5, 2007, an ATF inspection team consisting of 10 ATF IOIs inventoried approximately (b)(3)- Public Law 112-55 (125 Stat. 552) firearms onsite at S&W. The total number of firearms on hand according to S&W records was approximately (b)(3)- Public Law 112-55 (125 Stat. 552) firearms. In addition, the full inventory revealed that S&W had (b)(3) 112 Public Law 55 125 STAT 552 firearms on hand that were not entered into the A&D record (off book firearms). The computer printouts from S&W for these numbers are attached. See Exhibit 40. It was determined that prior to

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reconciliation there were (b)(3) 112 Public Law 55 125 STAT 552 firearms unaccounted for and/or missing after the inventory. See Exhibit 41.

Following the inventory results, S&W was directed to attempt to reconcile these missing firearms by locating the missing firearms and/or disposition paperwork if available. It was further advised that any firearms that remained unaccounted for would need to be filed on a theft/loss report. IOIs originally gave S&W until October 15, 2007 to reconcile the remaining missing firearm accounts at S&W (loan, repair, guard file). They failed to complete the reconciliation by that date. IOIs (b) (6) assisted S&W in reconciling the discrepancies by reviewing disposition paperwork and verifying physical firearms in inventory during the week of October 15, 2007. S&W was directed to complete and file Theft/Loss Reports for (b)(3) 112 Public Law 55 125 STAT 552 firearms on October 18 & 19, 2007 from each respective area (i.e. loan, repair, guard file). IOIs identified that S&W was missing (b)(3) 112 Public Law 55 125 STAT 552 firearms that could not be accounted for during the reconciliation process. A summary of the ATF filed Theft/Loss Reports for the entire inspection is attached. See Exhibit 42. Over the course of the inspection (b)(3) 112 Public Law 55 125 STAT 552 firearms have been reported as Theft/Loss Firearms. All Theft/Loss Reports are on file with ATF NTC and at the ATF Hartford, CT A/O.

S&W was cited under 27 CFR 478.123(b) for missing (b)(3) 112 Public Law 55 125 STAT 552 firearms during the course of the inspection. See attached ROV, violation #9. IOIs

(b)(3) 112 Public Law 55 125 STAT 552

IOIs encountered a number of difficulties during the course of the full inventory. Some of the problems with the inventory included S&W's inability to distinguish between (b) (4) and S&W firearms. In addition, it was discovered that not all S&W firearms were entered into the computer inventory, including competitor firearms and NFA firearms. See Exhibit 43.

Violation of variance conditions issued under 27 CFR 478.22. See ROV, violation #1.

In addition to these issues, IOIs (b) (6) discovered (b)(3) 112 Public Law 55 125 STAT 552 firearm frames in storage at S&W without serial numbers (performance center and customer stock). An inventory and picture of these firearms is attached. See Exhibit 44. The inventory was further complicated by the fact that firearms with duplicate serial numbers were also found on the premises. See Exhibit 44a. The unserialized frames and duplicate serial numbers are a violation under 27 CFR 478.92(a)(1)(i). The issue of unserialized frames and duplicate serial numbers at S&W was forwarded to ATF Headquarters for a

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(b)(3)- Public Law 112-55 (125 Stat. 552)

The inventory discrepancies at S&W were further compounded by the fact that there were a large number of firearms (b)(3) 112 Public Law 112 that were not entered into the computer A&D record as noted previously. This included approximately (b)(3) 112 (b) (4) found in a stock area that had been on hand for almost a month without being logged into the A&D record. See Exhibit 45. An inventory list of these firearms from October 2, 2007 is attached as an example of this violation. See Exhibit 45a. IOIs determined that the firearms were imported to S&W back on September 6, 2007 based on the ATF F6a, and not entered into the A&D record within the required 15 day period. See Exhibit 45b. Additionally, S&W is unable to determine which (b) (4) are missing or which guns have been stolen from shipments until the firearms are logged into their computer A&D record.

Licensee was cited under 27 CFR 478.123(a) for failing to enter (b)(3) 112 Public Law 55 125 firearms into their A&D record. See attached ROV, violation #8.

Additional difficulties were faced during the course of the inspection based on the fact that firearms were stored in numerous places throughout S&W. This included numerous storage locations outside the normal vault area, including firearms held in undisclosed locations such as the scrap area and in boxes in a locked room at the academy. After the initial inventory revealed (b)(3) 112 Public Law 55 125 ST missing firearms, IOIs suggested that S&W recheck the factory and any other locations for missing and/or unaccounted firearms. IOIs later found missing firearms in the scrap gun area and in boxes in a room at the S&W Academy at the end of October and beginning of November. See Exhibit 46. On or about November 3, 2007, it was discovered that some of the firearms in the scrap gun area were incorrectly listed as destroyed in the A&D record as far back as July 2007, but were still on hand at S&W. IOIs also discovered that some of the firearms were not recorded in the A&D record as required. See attached inventory list and sample A&D screen prints. See Exhibit 47. It was determined that the firearms discovered at the locked room in the academy included (b)(3) 112 Public Law 55 missing firearms. An inventory list is attached. See Exhibit 48. In addition, IOIs uncovered off book firearms in this academy room. Sample A&D screen prints are attached to Exhibit 48.

ACTIVE WORK IN PROCESS (WIP) FILE ISSUE/UNACCOUNTED FOR SERIAL NUMBERS:

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Difficulties encountered by the inspection team were compounded by S&W's initial inability to distinguish whether firearms that were entered into the A&D record were in fact manufactured. S&W claimed that the WIP file may have contained firearms that were not manufactured. The Theft/Loss report for the WIP (Work in process file) contained (b)(3) 112 Public L firearms. S&W claimed in a letter to ATF that accompanied this theft/loss report that these firearms were not manufactured. See Exhibit 49. It was later determined that this was not the case.

S&W had provided ATF IOIs the referenced letter as well as an explanation of a potential issue with (b)(6) unaccounted for serial numbers. See Exhibit 50. At that time S&W stated that there were over (b)(3)- Public Law 112-55 (125 Stat. 552) serial numbers in the active WIP file. On October 1, 2007, prior to the start of the full inventory, IOIs (b)(6) were advised by S&W personnel that the firearms in the active WIP file should be in inventory. The full inventory conducted revealed that the majority of the firearms in the WIP file were in fact found in inventory. S&W however could not account for (b)(3)- Public Law 112-55 (125 Stat. 552) of the firearms from the WIP file.

IOIs obtained information which conflicts with S&W's statements that they did not manufacture the (b)(3)- Public Law 112-55 (125 Stat. 552) missing firearms from the active WIP file. The following facts are known. S&W implemented a laser serial number system in 1997, which is a closed system where a serial number is not created until it is applied to a product as detailed in their attached letter (exhibit 49). IOIs determined that (b)(3)- Public Law 112-55 (125 Stat. 552) of the missing firearms from the WIP file had dates of manufacturer and/or acquisition in the S&W computer system from the year 2000 to present (well after the implementation of the laser loop system where a serial number is not created until it is placed on the gun). The majority of the missing firearms from the WIP list in fact had dates of manufacturer and/or acquisition that were post January 2005. (b)(3) 112 Public Law 55 125 STAT 552 of the firearms from the missing WIP file based in S&W records were manufactured in the last 12 months (greater than (b)(3)- Public Law 112-55 (125 Stat. 552) of the missing firearms).

(b)(3) 112 Public Law 55 125 STAT 552 of the firearms that S&W claimed were not manufactured showed movement through their computer system based on their status codes, which further indicates that these were manufactured guns. In addition, during the ongoing reconciliation, IOIs verified that (b)(3) 112 Public Law 55 of the firearms from the missing active wip file were in fact in inventory. See Exhibit 42.

(b)(3) 112 Public Law UNACCOUNTED FOR SERIAL NUMBERS/OLD WIP FILE
Smith & Wesson presently has an ongoing problem and accountability issue with (b)(3) 112 Public Law 55 125 STAT 552 serial numbers/firearms that they claimed were not manufactured but appear in what S&W records referred to as their Old WIP File. ATF IOIs obtained information during the course of the inspection that conflicted with S&W's statements that these firearms were not manufactured. As previously referenced S&W claimed and/or strongly implied that they did not

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manufacture (b)(3) 112 Public Law 55 serial numbers that appear in their "Old Wip" file (see exhibit 16 & exhibit 49). The serial numbers and/or firearms from this file were created and/or acquired between 1982 and 2002 based on the acquisition dates that appeared in the computer. IOIs later determined that S&W manufactured at least (b)(3) 112 Public L of these serial numbers. This determination was made after further investigation and inquiry into the (b)(3) 112 Public Law unaccounted for serial numbers revealed the details listed below.

IOIs discovered (b)(3) 112 of the firearms that S&W claimed they did not make were actually found in inventory as shown on the attached serial number list. See **Exhibit 51**. Status codes provided to the inspection team by S&W IT Director (b) (6), also revealed that there were missing firearms in the (b)(3) 112 Public Law unaccounted for serial number file. (b) (6) identified two codes in the Old Wip File that indicated possible missing firearms (code 66 - "Possible missing firearms, and code 77 - "Missing from financial inventory"). See **Exhibit 52**.

IOIs determined from the status codes that there were over (b)(3)- Public Law 112-55 (125 Stat. 552) firearms that showed movement within the S&W computer system, which indicates that these firearms were manufactured. IOIs also determined that there were additional bound book records available for over (b)(3)- Public Law 112-55 (125 Stat. 552) of these firearms. See **Exhibit 53**.

(b)(3) 112 Public Law 55 125 STAT 552

Corrective Action:

S&W was informed during the November 16, 2007, meeting with ATF of the violations involving their (b)(3) 112 Public Law serial number file. S&W was advised at that time that information obtained by ATF showed that approximately (b)(3)- Public Law 112-55 (125 Stat. 552) firearms showed movement in their computer system, which indicated that firearms had been manufactured. (b)(3) 112 Public Law 55 125 STAT 552

(b)(3) 112 Public Law 55 125 STAT 552

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S&W was cited for the (b)(3) 112 Public Law 56 unaccounted for serial numbers in the old WIP file under 27 CFR 478.123(b). See attached ROV, violation #9.

S&W Failure to reconcile the (b)(3) 112 Public Law 56 serial number file as requested:

On December 5, 2007, a meeting held with S&W Vice President (b) (6), IT Director (b) (6) and Compliance Manager (b) (6). ATF attendees included ATF Area Supervisor (b) (6) and IOIs (b) (6). The meeting was held regarding the reconciliation of the (b)(3) 112 Public Law 56 serial number file. At this meeting, IOIs learned that S&W had failed to begin to reconcile this file. IOIs had first instructed S&W to reconcile the file in October 2007, and again at the formal meeting held with S&W in November 2007. To initiate the reconciliation of this file a list was provided of the (b)(3) 112 Public Law 56 serial numbers with hits and requested that S&W begin to locate records for these firearms. S&W was also advised of additional ATF analysis of the (b)(3) 112 Public Law 56 serial number file, including the discovery of status codes that indicated possible missing guns within the (b)(3) 112 Public Law 56 unaccounted for serial number file. S&W was instructed to begin to immediately reconcile the firearms with missing firearm status codes (status codes 66 & 77).

On December 14, 2007 Theft/Loss Reports were filed by S&W Compliance Manager (b) (6) for (b)(3) 112 Public Law 56 firearms that were status code 66&77. The ATF Theft/Loss Reports filed by (b) (6) were found to be missing required ATF information, including acquisition dates and model/caliber information. When IOIs questioned (b) (6) regarding the missing information (b) (6) claimed that they could not verify the information. See Exhibit 56. However, ATF IOIs had found the missing information in S&W records and in fact had provided S&W with the information during the December meeting. See Exhibit 57. After further questioning (b) (6) on his statements regarding the missing information he claimed that the Old Wip File was not an "Acquisition and Disposition Record". This statement was later recanted by S&W Vice President (b) (6), who acknowledged that the Old Wip File was at least an "Acquisition Record".

On January 10, 2008, Area Supervisor (b) (6) and IOIs (b) (6) attended a meeting with (b) (6) to discuss the (b)(3) 112 Public Law 56 serial number file as well as the filing of the ATF Theft/Loss Reports with incomplete information. IOIs informed S&W that the data for the missing firearms was known to be available and must be provided as required. S&W agreed to re-file the theft/loss reports with required ATF data. IOIs also received a report back on the (b)(3) 112 Public Law 56 hits from the (b)(3) 112 Public Law 56 file, which indicated records were available with disposition information for some but not all of the firearms. S&W could not account for or provide dispositions for approximately (b)(3) 112 of the firearms. S&W filed a theft/loss report on January 10, 2008, for this group of missing firearms from the (b)(3) 112 Public Law 56 Old Wip file.

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IOIs also discussed the fact that computer codes provided to the inspection team indicated that over (b)(3)- Public Law 112-55 (125 Stat. 552) firearms were manufactured according to movement within their computer system. S&W was advised again to begin the reconciliation process for these guns. IOIs also discussed the (b)(3) 112 Public Law 112-55 (125 Stat. 552) hits and the comparison to S&W databases, which also showed that some of the guns from this (b)(3) 112 Public Law 112-55 (125 Stat. 552) unaccounted for serial number file were manufactured and that records were available at S&W. S&W was instructed to locate dispositions for these firearms and to update their databases. S&W was further advised that they would need to file Theft/Loss reports for any of the manufactured firearms which could not be accounted for at the end of this process.

S&W advised that they would hire an outside firm to reconcile their databases and estimated that this reconciliation would be accomplished by the end of April. See attached document from S&W highlighting the reconciliation plan for the (b)(3) 112 Public Law 112-55 (125 Stat. 552) unaccounted for serial number file. See Exhibit 58.

ATF IOIs (b) (6) in further follow up activities in March 2008 found that S&W was failing to reconcile the (b)(3) 112 Public Law 112-55 (125 Stat. 552) serial number per the previous agreements with ATF. Specifically, IOIs discovered that S&W was not reconciling the portion of the file that pertained to computer records outside of the bound book reference file. S&W had previously agreed to reconcile this portion of the file by the end of January 2008 as detailed on Exhibit 58. IOIs again instructed S&W that these records must be reconciled. On March 14, 2008, S&W filed a theft/loss report for (b)(3) 112 Public Law 112-55 (125 Stat. 552) of these firearms after S&W was unable to locate dispositions for this particular group of firearms.

As of March 14, 2008, Theft/Loss Report have been filed for (b)(3) 112 Public Law 112-55 (125 Stat. 552) firearms as a result of the ATF inspection. Additionally, S&W reported (b)(3)- Public Law 112-55 (125 Stat. 552) firearms as Theft/Losses on February 26, 2008. This was a result of S&W's own internal inventory. IOIs determined that most if not all of these firearms went missing since October 2007 after the ATF inventory was conducted. See Exhibit 58a.

The issue of missing guns has been addressed with S&W repeatedly, including at the formal meeting in November 2007.

6 – ATF Forms 4473 – NICS & Other Dispositions

S&W Compliance Manager (b) (6) stated that S&W does not sell or transfer firearms to non-licensees under their Manufacturing license.

IOIs later determined that firearms had been transferred to a non-S&W employee from their loan account in violation of Federal Firearm laws and regulations.

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The following was discovered:

S&W shipped ^{(b)(3)- Public Law 112-55 (125 Stat. 552)} firearms interstate on or about September 29, 2007, to an unlicensed individual who was not a S&W employee (b) (6)

(b)(3)- Public Law 112-55 (125 Stat. 552)

S&W was cited on the attached ROV, violations #3-6 for the following violations:

- Out of state transfer of handgun cited under 27 CFR 478.99(a))
- Failure to complete NICS (violation of 27 CFR 478.102)
- Failure to complete ATF Form 4473 (violation of 27 CFR 478.124(a))
- Failure to complete Multiple Sale form (violation of 27 CFR 478.126a)

Corrective Actions:

Firearms were returned to S&W per the attached statement from (b) (6) and A&D screen prints. See Exhibit 60. S&W was informed of this violation at the November 16, 2007, meeting.

7 - Suspicious/Prohibited Purchasers

(b)(3)- Public Law 112-55 (125 Stat. 552)

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(b)(3) 112 Public Law 55 125 STAT 552



8 – Trace Activity

(b)(3) 112 Public Law 55 125 STAT 552



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(b)(3)- Public Law 112-55 (125 Stat. 552)



9 - Multiple Sales

See Section 6.

10 - NFA/Importer/Collector/Manufacturer

(b)(3) - (26 USC 6103)



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(b)(3) - (26 USC 6103)



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(b)(3) - (26 USC 6103)



11 - Referrals

(b) (6), (b) (7)(C)



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(b) (6), (b) (7)(C)

12 - Other

13 - Closing Actions

S&W closing conference is scheduled to be held in Boston Field Division Office on June 2, 2008. See Exhibit 89.

14 - Violations

1. 18 U.S.C. 923(g)(1)(A) & 27 CFR 478.22.

Failure to adhere to variance provisions. Licensee failed to meet established standards for a computerized Acquisition and Disposition Record (A&D). The following deficiencies were noted:

-Provision 1: Not all ATF required information was shown or accurately reflected in the computerized A&D Record Book maintained by S&W (Date of acquisition, manufacturer, importer, model, type, caliber).

-Provision 2: S&W was unable to accurately query acquisition date of firearms in current database. Information was either missing or incorrect in many instances.

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-Provision 4: S&W was unable to provide ATF IOIs accurate record printouts as requested.

-Provision 5: S&W was unable to accurately reflect firearms in inventory, in fact S&W could not account for (b)(3) 112 Public Law 55 125 ST firearms in their active computer A&D record. In addition, S&W could also not determine the status of (b)(3) 112 Public Law 55 125 serial numbers in their old WIP (work in process) file.

-Provision 6: S&W failed to record the Manufacturer information for imported firearms in (b)(3) 112 Public Law 55 125 instances (b) (4)

-Provision 7: Printout/records reflected non-firearm items (air guns, handcuffs and other assorted merchandise).

-Provision 8: S&W failed to properly record the name and address or name and license number of the supplier, as well as the purchaser of firearms. (Suppliers included (b) (4)

-Provision 9: System not self contained (NFA and some competitor guns maintained off the system).

-Provision 11: S&W failed to report system changes to ATF (b) (4)

Corrective Action:

The deficiencies within the system are such that ATF IOIs recommended that S&W obtain a new, modern, and up to date computer system that is capable of meeting ATF requirements.

2. 18 U.S.C. 923(g)(6) & 27 CFR 478.39a.

Failure to Report Theft or Loss of firearms. ATF IOIs discovered that dating back to February 2005, S&W was missing firearms and failed to report these to the ATF as required. S&W is aware of the requirement to report theft/loss firearms within 48 hours. In fact, prior to the start of this current inspection during the periods of September 1, 2006 - August 31, 2007, (b)(3) 112 Public Law 112-55 (125 Stat. 552) T/L reports were filed S&W. This is also illustrated in S&W internal documents that were obtained by IOIs during the inspection.

S&W failed to Report Theft/Loss Firearms after inventories revealed missing firearms in 2005, 2006, and again in 2007.

(b)(3) 112 Public Law 112-55 (125 Stat. 552) firearms were missing after a S&W inventory conducted on or about March 24, 2007 and not reported to ATF as required. ATF IOIs discovered some of these same firearms were still missing during an ATF Inventory in Sept. 2007.

(b)(3) 112 Public Law 112-55 (125 Stat. 552) firearms were missing after an inventory conducted by S&W on or about March 25, 2006, these firearms were also not reported to ATF as required.

(b)(3) 112 Public Law 112-55 (125 Stat. 552) firearms were missing after an inventory conducted by S&W on or about February 2, 2005 and S&W failed to report them to ATF.

There were also at least (b)(3) 112 Public Law 112-55 (125 Stat. 552) known instances of T/L firearms not being reported timely.

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On November 16, 2007, after the discovery of these violations S&W Executives were formally notified by ATF of this violation during a meeting with ATF officials at the Boston Field Division Office. Despite this meeting ATF IOIs discovered that S&W was again missing firearms in November 2007 and again in January 2008 and did not report to ATF within 48 hours of discovery as required under federal regulations (b)(3)- Public Law 112-55 (125 Stat. 552)

(b)(3)- Public Law 112-55 (125 Stat. 552)

Corrective Action:

After the discovery of these violations a full inventory of the (b)(3)- Public Law 112-55 (125 Stat. 552) firearms on hand at Smith & Wesson was conducted during the week of October 1, 2007. As a result of this inventory and subsequent investigation (b)(3) 112 Public Law 55 125 STAT 5 firearms were identified as missing from inventory and reported as Theft/Loss Firearms.

(b)(3)- Public Law 112-55 (125 Stat. 552), (b) (4)

3. 18 U.S.C. 922(b)(3) & 27 CFR 478.99(a).
Sale/transfer of a handgun to an out of state resident.
4. 18 U.S.C. 922(t)(1)(A) & 27 CFR 478.102.
Failure to complete a NICS background check.
5. 18 U.S.C. 923(g)(1)(A) & 27 CFR 478.124(a).
Failure to complete ATF Form 4473.
6. 18 U.S.C. 923(g)(3)(A) & 27 CFR 478.126a.
ATF IOIs during the course of the inspection discovered that Smith & Wesson was transferring firearms/handguns out of state directly to non-Smith & Wesson employees. The following information was determined:

(b)(3)- Public Law 112-55 (125 Stat. 552)

(b)(3)- Public Law 112-55 (125 Stat. 552) The transfer of these firearms was in violation of numerous federal firearms laws and regulations as detailed in violation numbers 3-6 listed above.

Corrective Action:

Smith & Wesson was advised that their loan program was not being maintained or conducted in compliance with federal firearms laws and regulations. S&W

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was advised that firearms can be loaned to employees for temporary business use (not personal) but that their records should reflect the accurate disposition of these firearms. S&W was advised that the transfer of S&W inventory firearms to S&W personnel for personal use (i.e. hunting) would require the completion of ATF F4473 and/or state paperwork (FA10).

7. **18 U.S.C. 923(g)(1)(A) & 27 CFR 478.122(a).**

Records maintained by licensed importers.

In (b)(3) 112 Public Law 55 125 STAT 552 instances S&W failed to enter in their A&D record the Manufacturer or country of Manufacturer (b) (4)

In addition, in (b)(3) 112 Public Law 55 125 STAT 552 instances S&W failed to timely enter and/or entered incorrect acquisition dates into their A&D record (b) (4)

Corrective Action:

A&D records need to be brought up to date to correctly reflect acquisitions.

8. **18 U.S.C. 923(g)(1)(A) & 27 CFR 478.123(a).**

Records maintained by licensed manufacturers.

-Smith & Wesson had (b)(3) 112 Public Law 55 125 firearms that were not entered into their A&D record as required (off book firearms).

-Smith & Wesson failed to record acquisition information indicating from whom firearms were received from in (b)(3) 112 Public Law 55 125 STAT 552 instances (b) (4) - (b) (4). Issue presented to S&W in November 16, 2007 meeting with ATF. Violation was found to be uncorrected and still ongoing as of January 17, 2008.

-S&W failed to list all required information into their A&D record (model, caliber, type) in numerous instances.

Corrective Action:

Theft/Loss reports were obtained for the (b)(3) 112 Public Law 55 125 missing firearms. S&W was advised that as required by federal regulations they must maintain records of the acquisition and disposition of firearms. As such, Smith & Wesson was advised that they would need to account for the (b)(3) 112 Public Law 55 125 serial numbers by checking for disposition information for all of these firearms. S&W was advised that any and all missing firearms after this reconciliation would need to be reported to ATF as Theft/Loss firearms as required. S&W was advised that the A&D record was exactly that, a record of firearms acquired and disposed of and that serial numbers should never be entered into this record unless and until the firearms is acquired or otherwise manufactured and that they are responsible for maintaining all such records as required by regulations.

9. **18 U.S.C. 923(g)(1)(A) & 27 CFR 478.123(b)**

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- Smith & Wesson could not determine the status of (b)(3) 112 Public Law 55 125 STAT 552 serial numbers that were recorded as acquisitions in their Work In Process File. S&W initially could not confirm whether these serial numbers were applied to manufactured firearms, or whether dispositions were available.

In a letter to ATF dated October 1, 2007, S&W stated the following;

"The blocks used in our old system, (serial number blocks) and to some extent, during our transition, have resulted in (b)(3) 112 Public Law 55 125 STAT 552 S/Ns that were created but not produced. We do not believe firearms were manufactured utilizing these S/Ns. Overtime, the serial numbers created but not utilized, were transferred to an "Old File". We do not have any way to determine with 100% certainty that none of these S/Ns were applied to product. To my knowledge, we have not experienced any BATF&E request on any unused S/Ns."

ATF IOIs determined that there were additional records available at S&W for (b)(3) 112 Public Law 55 125 STAT 552 of these serial numbers in the "Old Wip file". Information obtained from the computer records pointed to at least (b)(3) 112 Public Law 55 125 STAT 552 of these serial numbers being manufactured into firearms. Additional information obtained by IOIs also revealed that there were firearms that were known to be missing based on their status codes in the S&W computer system (status code 66 & code 77). These possible missing firearms were never reported to ATF as Theft/Loss Firearms as required by federal firearms laws and regulations. (b)(3) 112 Public Law 55 125 STAT 552

(b)(3) 112 Public Law 55 125 STAT 552

-Smith & Wesson was missing (b)(3) 112 Public Law 55 125 STAT 552 firearms during the course of the ATF inspection. These firearms were reported as Theft/Loss firearms during the course of the inspection (b)(3)- Public Law 112-55 (125 Stat. 552)

Corrective Action:

S&W was advised that as required by federal regulations they must maintain records of the acquisition and disposition of firearms. As such, Smith & Wesson was advised that they would need to account for the (b)(3) 112 Public Law 55 125 STAT 552 serial numbers by checking for disposition information for all of these firearms. S&W was advised that any and all missing firearms after this reconciliation would need to be reported to ATF as Theft/Loss firearms as required.

(b)(3)- Public Law 112-55 (125 Stat. 552)

10. 18 U.S.C. 923(g)(1)(A) & 27 CFR 478.123(d).
S&W failed to properly (b)(3)- Public Law 112-55 (125 Stat. 552)

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(b)(3) 112 Pub). It was later determined that in at least (b)(3) 112 instances firearms were later transferred to third parties without any federal or state transfer paperwork. This is also another instance of ATF Violation #5.

Corrective Action:

Corrective Action Pending. Violation referred to criminal enforcement.

11. **26 U.S.C. 5861(d) Prohibited Acts**

(b)(3) - (26 USC 6103)

Corrective Action:

Firearms were seized and/or abandoned to ATF Criminal Enforcement.

12. **26 U.S.C. 5861(e)**

Unlawful transfer of an unregistered/unserialized firearm
as detailed below:

(b)(3)- Public Law 112-55 (125 Stat. 552)

Corrective Action:

Firearm in possession of CVHS will be transferred to a qualified government entity or it will be subject to seize/abandonment to ATF.

13. **26 U.S.C. 5841(e)**

(b)(3) - (26 USC 6103)

Corrective Action:

Registration documents were secured by ATF IOIs and forwarded to S&W to maintain as required by federal law and regulations.

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(b) (6)

ATF Industry Operations
Investigator

May 20, 2008

Signature

Title

Date of Report

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(b) (6)

From: (b) (6)

Sent: Monday, September 24, 2007 8:41 PM

To:

Cc:

Subject: S&W inspection status

Hello (b) (6)

In continuing the inspection today of S&W we have encountered additional difficulties. This includes a lack of follow through on S&W's part in correcting/addressing deficiencies, as well as actions taken by (b) (6) S&W Compliance Manager that has affected our inspection progress.

To date as you are aware we have reported (b) (6) firearms as theft/loss firearms as a result of our inspection/inventory of S&W .38's, .357's and Sigma line of firearms. (b) (6) of these were Sigma's and .357 firearms that were reported lost/stolen on Thursday, 9/20/07. In addition (b) (6) firearms were found in the vault that had not been entered into the computer inventory record (off book guns). Over (b) (6) firearms were also found on site for the selected lines that were not in the initial computer inventory lists provided by S&W. Some of these guns were firearms that were in a shipping status but had not actually left the premises while others were left off the computer inventory but still in the vault.

After finding discrepancies with the Sigma line of firearms we requested that S&W begin to inventory the remaining firearms in this line. S&W (b) (6) as you are aware has so far refused to do this.

S&W personnel including (b) (6) did however agree to take steps during the inspection process/inventory to ensure we are able to do our jobs and conduct an accurate inventory. This included freezing the vault inventory of firearms for the particular line of firearms we were looking at for the one or two days that we anticipated these inventories would take.

(b) (6) following this agreement boxed up and prepared to ship .357 firearms last Wednesday just as we were beginning our inventory of the .357 line. At least (b) (6) of the firearms found in these shipments were not logged out of the vault and still listed in the inventory that we had. (b) (6) when confronted with this problem simply stated he "Had" to ship the guns out. He further admitted he had directed his staff to box up some of the .357 firearms up after agreeing not to do so. (b) (6) further advised that he made the decision to do this. (b) (6) was advised of the discrepancies with the .357 inventory to which he replied that no gun could leave S&W without being scanned or without paperwork. (b) (6) in fact, repeatedly assured me of this. On Thursday as you are aware S&W and Ron (b) (6) again agreed to voluntarily hold the remaining .357 firearms that we had not yet inventoried. Today we found that .357 firearms were again shipped out sometime on Thursday before we could complete our inventory of that line.

Following these discrepancies and the reporting (b) (6) theft/loss firearms Investigator (b) (6) contacted (b) (6) ATF National Tracing Center to inquire as to whether any of the theft/loss firearms had any hits/traces. No hits were reported by NTC however (b) (6) of the firearms turned up as a multiple sale in New Jersey. (b) (6) completed (b) (6)

b3 Public Law 112-55 (125 Stat. 552)

(b) (6) requested an invoice from the FFL involved. We later learned that the FFL could not produce a commercial record or invoice from S&W. S&W could also not produce a commercial record for this shipment. b3 Public Law 112-55 (125 Stat. 552)

b3 Public Law 112-55 (125 Stat. 552)

Based on the above information in addition to the missing firearms at S&W, we also apparently have guns that have been shipped out without any records of where they went. Were it not for (b) (6) check with NTC and the hit on the multiple sale we would have not discovered this or had any record of where these guns went.

In addition to the above problems we also spoke with (b) (6) S&W Chief of Security today and inquired as to whether he had been notified and/or provided a list of the missing guns. He advised that he had not been provided a list of the missing guns. We had previously reached an agreement with (b) (6) (b) (6) that lists of missing guns would be provided to the security chief so that his officers (who are sworn police officers) would be able to keep an eye out for the firearms.

We also spoke with (b) (6) today as to whether his staff had looked for any of the theft/loss firearms. (b) (6) advised that he did not have anyone actively looking for the firearms as we had requested since the Theft/Loss report on Thursday.

For starters tomorrow as suggested we will seek to look for any back up records to see if we can find any kind of shipping documents to account for the firearms sent to NJ, including any security documents for commercial carriers entering/leaving S&W on or about 3/15/07.

Thanks

(b) (6)

ATF Industry Operations Investigator
Hartford, CT Area Office

(b) (6)

(b) (6)

From: (b) (6)

Sent: Thursday, September 27, 2007 7:38 PM

To: (b) (6)

Cc:

Subject: S&W Inventory Concerns

Hello (b) (6)

Based upon what we learned today, S&W's computer A&D records are so antiquated and their internal controls are so weak our confidence in any inventory attempted is going to be limited. We however as you know will do our best to conduct as thorough and as complete an inventory as we can. Further details regarding the days difficulties are listed below, including the discovery of a failure to report missing/unaccounted for firearms to ATF after a S&W inventory that was conducted on 3/24/07. S&W has so far agreed to freeze their inventory for Monday and Tuesday and to stop firearms production/assembly in process while we are conducting the inventory.

We arrived at S&W today to find ourselves again taken off task do to the continued failure of S&W personnel to provide information as we requested. We had requested that (b) (6) provide us an accounting of the missing firearms from the S&W inventory that was done on 3/24/07. We requested the information for 9am today so that we could focus on preparing for the full blown inventory on Monday and to prepare a Theft/Loss report for any of the that we could not locate. (b) (6) did not have this information to us until 4:30 today.

In reviewing their inventory process today we also discovered additional missing firearms (mainly (b) (4) firearms) that were unaccounted for from the same 3/24/07 inventory. Based on this information, S&W failed to report firearms that were missing or unaccounted for after this inventory on 3/24/07. We were only able to review information for the (b) (4) firearms off of this list. S&W was unable to provide a reconciliation list for any of the firearms, which required a time consuming serial number by serial number inquiry in their system. Based on this we had them file another Theft/Loss report today for firearms (Total Theft/Loss guns is now guns). We still need to verify the whereabouts of the remaining firearms from the two lists. S&W advised that most were shipped out (not sure how they could ship them out when they could not find them on hand on 3/24/07, but that is another story).

Regarding the non-reporting of the firearms from the 3/24/07 we interviewed key S&W personnel today and received conflicting information.

(b) (6) Inventory Manager stated that he is provided the list of missing guns from the MSI Department after the inventory (IT personnel) and told to just keep looking for them until they are found. Eventually he reports back to (b) (6) Accounting Manager if guns are found (b) (6) advised he does not inform (b) (6) Compliance Manager of the missing guns and does not report it to ATF. He advised he was aware of the requirement to report missing firearms to ATF but did not report these guns as theft/loss firearms to ATF.

(b) (6) Accounting Manager advised he looks at the missing guns for financial purposes and gives the listing back to (b) (6)

4/15/2008

Ex 37.

(b) (6) Plant Manager would not acknowledge the missing guns and/or did not answer the question.

(b) (6) Receiving Manager had no idea of the missing guns and/or procedures.

(b) (6) Operational VP stated that the firearms inventories are done for "financial reasons only".

In short there seemed to be no system in place for notifying ATF of missing guns following their inventories. (b) (6) Compliance Manager and (b) (6) Inventory Manager are both aware of the need to notify ATF of Theft/Loss firearms. We do have written internal email documents showing (b) (6) failed to report Theft/loss firearms within 48 hours on other occasions.

We encountered additional difficulties in the preparation for Monday's ATF inventory. S&W was preparing to inventory only their "finished goods/vault area". We had as you know already instructed them that we were conducting a 100% inventory of all firearms on hand that would be required to be in the A&D. One of the issues was that (b) (6) Plant Manager needed the definition of a "firearm" from us. He apparently also did not even have an ATF regulations book on hand. (b) (6) ended up having to read him the definition word for word from the reg. book as to what a firearm was. As a result of the confusion we called another meeting with all available executives (b) (6), CFO, and (b) (6) (b) (6) President/COC (b) (6) V.P. Human Resources) and key S&W personnel including (b) (6) (IT Department) and (b) (6) Chief of Security. We again reiterated that we were conducting a 100% inventory of all firearms on the premises (including finished serialized receivers) so there was no confusion. During the course of these conversations we learned that S&W has multiple coding systems in their computers including for example, finished goods, shipping, assembly in process, vault, repair, LOAN ??, guard, return, and other categories of firearms. There is apparently no one computer coding or search that can be done to account for all firearms that are physically on hand. We also learned that firearms are transferred about the plant, reentered into different computer systems, loaned employees, sent for testing off site at the academy and/or loaned out to S&W employees. We were also advised that various S&W employees may have guns in their offices, in file cabinets, and at home for "loaning" purposes. We advised S&W that they somehow need to come up with a way to account for all firearms on hand or that should be on hand for Monday that should be in the ATF Computer A&D record.

Based on the above information I cannot guarantee confidence in any inventory we attempt based on their system and lack of internal controls. We however, will as discussed do the best that we can with their existing inventory system to account for all firearms on hand that we can and to attempt to determine how many missing guns they actually have. We were flat out told by various S&W employees that financial concerns have governed all else at S&W for the last few years and that ATF compliance was not at the forefront or even thought of in some of their processes, even for missing firearms. The IT department also advised that the S&W computer system was outdated and obviously not built to comply with ATF requirements. More emphasis seems to be placed in tracking guns in the manufacturing process then showing what is on hand for inventory purposes. It takes hours if not days to receive any kind of inventory that we have requested, even if it has been one or two inventory lines.

Based on the system limitations I may implement an integrity check into the process by inventorying one line they way we already have without their scanning system. We can discuss tomorrow but I am open to ideas.

Thanks

4/15/2008

EX 37

(b) (6)
ATF Industry Operations Investigator
Hartford, CT Area Office

(b) (6)

4/15/2008

EX37

(b) (6)

(b) (6)

From: (b) (6)
Sent: Monday, January 21, 2008 10:12 AM
To: (b) (6)
Cc:
Subject: FW: (b) (6) - Guns for Repair

See below,

These guns have been missing since the AFT audit. There were in the warranty area prior to the audit and are no longer there. Do you want to add these to your missing/stolen file?

(b) (6)

-----Original Message-----
From: (b) (6)
Sent: Monday, January 07, 2008 2:12 PM
To: (b) (6)
Subject: Re: (b) (6) - Guns for Repair

I do not know where they are.

(b) (6)

Sent from my BlackBerry Wireless Device

-----Original Message-----
From: (b) (6)
To: (b) (6)
Sent: Mon Jan 07 14:10:48 2008
Subject: FW: (b) (6) - Guns for Repair

(b) (6)

The fore mentioned guns are missing from the Pistol assembly area. These guns have been in house for nearly a year and we finally got the approval to replace these but now can not find them. They were sitting in our warranty area and have not been seen since the AFT audit took place. All four of these had customer return labels and were just parts throw in a box, some only had frames in the box.

My question is do you know the where-a-bouts of these?

(b) (6) maybe you know what happen to them?

Thanks,

(b) (6)

-----Original Message-----
From: Valley, Lil
Sent: Monday, June 04, 2007 1:09 PM
To: (b) (6)
Cc: (b) (6)
Subject: (b) (6) - Guns for Repair

(b) (6)

(b) (6) has sent guns for repairs - S/N's VHN (b) (6) b3 Public Law 112-55 (125 Stat. 552)

Recap from Agenda/Smith & Wesson Compliance Inspection on November 14, 2007

-
1. There were a total of [REDACTED] Firearms recovered since the last ATF visit. [REDACTED] Firearms were physically verified from the location at the Academy/Engineer's room and [REDACTED] from various locations/individuals brought into the office area near [REDACTED] area.
03 Public Law 112-55 (125 Stat. 552)
(b) (6)
 2. S& W provided a copy of the amended reports/recovered firearms since the last ATF/S&W visit.
 3. S&W had [REDACTED] frames from the Scrap Area on hand and was physically inspected for a verification of serial number(s).
03 Public Law 112-55 (125 Stat. 552)
 4. S&W provided an listing of the bound manufacturing books kept on site at the address: 2100 Roosevelt Avenue. [REDACTED] is still in the process of researching and compiling the list. [REDACTED] did provide a listing of the Index Bound Books, however, the list is not complete. [REDACTED] will research and complete and return. *(Requires follow-up by ATF.)*
 5. [REDACTED] was advised that ATF will research and respond. This will also be addressed at the S&W/ATF meeting to be held on Friday, November 16th.
(Requires follow-up by ATF if not addressed at the aforementioned meeting.)
 6. Copies of the [REDACTED] NFA certifications for silencers recently received from the ATF/NFA branch were provided by S&W.
03 Public Law 112-55 (125 Stat. 552)
 7. S&W presented a draft letter to the NFA Branch requesting a future certification. ATF reviewed the letter, no suggestions for revision from the ATF IOI's were provided. Copy obtained for file.
 8. ATF requested that a listing be provided from S&W for the inventory taken by IOI [REDACTED] located within the Performance Center of unserialized frames by Part numbers and quantity. [REDACTED] will provide this at a future date.
(Requires follow-up by ATF.)
 9. IOI interviewed S& W employee [REDACTED] in the Scrap Area and Betty located in quality control for verification of procedures of the coding of the scrap guns. Both a Scrap Report and a report for Serial numbers removed from frames/OSR replacement frames were obtained for exhibit.
 10. The [REDACTED] was located at the Retail store in the 2nd case from the right. IOI's [REDACTED] and [REDACTED] verified the serial number on 11/08/07. This firearm should be removed from a theft/loss report if it was previously reported [REDACTED] *did S&W provide an amended Theft/Loss report*
03 Public Law 112-55 (125 Stat. 552)

stating this firearm was recovered? I did not view one. Otherwise, we need to follow-up.)

Note: Also, we need to research and determine whether or not the Retail Store firearms on display were inventoried. This is where the M& P 15 was found.

EX48

(b) (6)

From: (b) (6)
 Sent: Thursday, November 01, 2007 4:13 PM
 To: (b) (6)
 Cc: Zammillo, James A., Sr.; (b) (6)
 Subject: FW: S&W
 Importance: High

(b) (6)

Action necessary. See below.

From: Zammillo, James A., Sr.
 Sent: Thursday, November 01, 2007 3:11 PM
 To: (b) (6)
 Subject: RE: S&W

UNSUCCESSFUL
 TRACES

53 Public Law 112-55 (125 Stat. 552)

(b) (6) unsuccessful in the time period 2005-7. These stopped at S&W.

On Monday (b) (6) is reviewing all traces to get report as to why. Some are not their fault, e.g. age. Many, many are their fault. Details next week.

Can you send him the numbers that are missing?

James A. Zammillo
 Deputy Assistant Director (FO)
 Office: (b) (6)
 Cell: (b) (6)
 Fax: (b) (6)

From: (b) (6)
 Sent: Thursday, November 01, 2007 4:01 PM
 To: (b) (6) Zammillo, James A., Sr.
 Subject: RE: S&W

10-4. We finished about an hour ago and just returned to hotel and reading emails. See you next week.

From: (b) (6)
 Sent: Thursday, November 01, 2007 2:57 PM
 To: (b) (6) Zammillo, James A., Sr.
 Subject: RE: S&W

Discussed issue with DAD Zammillo earlier today. Did not bother you as I thought you would be tied up with panel interviews. Thanks for staying on top of all issues.

(b) (6)

Special Agent in Charge

Ex 64

4/30/2008

Boston Field Division

Telephone (b) (6)
Cell Phone (b) (6)

From: (b) (6)
Sent: Thursday, November 01, 2007 3:52 PM
To: Zammillo, James A., Sr. (b) (6)
Subject: RE: S&W

Actually, I had forwarded a request to (b) (6) last Friday requesting his assistance in getting trace information on S & W as was previously requested through the field office in Hartford but to date have had no response from (b) (6). I will ask Acting A/S (b) (6) to respond to you regarding S & W side of this issue.

From: Zammillo, James A., Sr.
Sent: Thursday, November 01, 2007 12:07 PM
To: (b) (6)
Cc: Zammillo, James A., Sr.
Subject: S&W

Do you have any info on how S&W is interacting with the Tracing Center? Rumor is that it is not well.

James A. Zammillo
Deputy Assistant Director (FO)
Office (b) (6)
Cell: (b) (6)
Fax: (b) (6)

The New York Times

(b) (4)

THE NEW YORK TIMES
PRINTED ON RECYCLED PAPER

April 16, 2007

Virginia Tech Shooting Leaves 33 Dead

By CHRISTINE HAUSER and ANAHAD O'CONNOR

Thirty-three people were killed today on the campus of Virginia Tech in what appears to be the deadliest shooting rampage in American history, according to federal law-enforcement officials. Many of the victims were students shot in a dorm and a classroom building.

"Today, the university was struck with a tragedy that we consider of monumental proportions," said the university's president, Charles Steger. The campus police chief said this evening that 15 people were wounded by the gunman, although there were other reports of higher numbers of injuries.

Witnesses described scenes of mass chaos and unimaginable horror as some students were lined up against a wall and shot. Others jumped out of windows to escape, or crouched on floors to take cover.

The killings occurred in two separate attacks on the campus in Blacksburg, Va. The first at around 7:15 a.m., when two people were shot and killed at a dormitory. More than two and a half hours later, 31 others, including the gunman, were shot and killed across campus in a classroom building, where some of the doors had been chained. Victims were found in different locations around the building.

The first attack started as students were getting ready for classes or were on their way there. The university did not evacuate the campus or notify students of that attack until several hours later.

As the rampage unfolded, details emerged from witnesses describing a gunman going room to room in a dormitory, Ambler Johnston Hall, and of gunfire later at Norris Hall, a science and engineering classroom building. When it was over, even sidewalks were stained with blood. Among those dead was the gunman, whose body was found along with victims in Norris Hall.

"Norris Hall is a tragic and sorrowful crime scene," said the campus police chief at Virginia Tech, Wendell Flinchum.

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Chief Flinchum said the gunman took his own life. He said at a televised news briefing this evening that the police had a preliminary identification of the suspected gunman but they were not yet ready to release it. He said the gunman was not a student.

According to a federal law enforcement official, the gunman did not have identification and could not be easily identified visually because of the severity of an apparently self-inflicted wound to the head. He said investigators were trying to trace purchase records for two handguns found near the body.

At televised news conferences this afternoon and this evening, Chief Flinchum and Mr. Steger tried to explain why authorities did not act to secure the rest of the campus immediately after the first shooting.

Chief Flinchum said that initially officials thought that the shooting was "domestic," suggesting that it was between individuals who knew each other, and isolated to the dormitory. He said the campus was not shut down after the first shooting because authorities thought that the attacker may have left the campus, or even the state.

"We knew we had two people shot," he said. "We secured the building. We secured the crime scene." He later added: "We acted on the best information we had at the time."

Chief Flinchum said officers initially began investigating a "person of interest," as a result of the dormitory shootings. The person, a male, was described as a friend of one of the dorm victims, but Chief Flinchum said the police had not detained him.

At 9:45, police got another 911 call about shootings at Norris Hall, just as university officials were meeting to discuss the first shootings. "We were actually having a meeting about the earlier shootings when we learned that another shooting was underway," Mr. Steger told reporters Monday night. By the time officers arrived the shooting had stopped and the gunman had killed himself, the Chief said.

Police appeared to believe that the two shootings were related, but said they could not confirm that until they had the results of a ballistics analysis.

A parent of one student, Elaine Goss, said her son, Alec Calhoun, a junior engineering major, jumped out a second-story window in Norris Hall when the gunman entered his classroom.

She said that she first spoke to her son, "I couldn't understand him; it was like gibberish."

"It took a while to figure out shootings, lots of shootings, and that his whole class had jumped

out the window," she said.

Ms. Goss said that her son hurt his back in the jump and went to the hospital.

Another student, Jessica Paulson, said she was on the fourth floor at Ambler Johnston Hall when the shootings occurred on the opposite side of the floor.

"You could hear two shots," one followed shortly by a second," recounted Ms. Paulson, who was preparing to go to an early class. Neither she nor most of the other students nearby understood what had happened until several hours later.

At least 17 Virginia Tech students were being treated for gunshot wounds and other injuries at Montgomery Regional Hospital, and four of them were in surgery, according to a hospital spokesperson. At Lewis-Gale Medical Center, in Salem, Va., four students and a staff member were treated for injuries. Two were in stable condition, and the conditions of the other three were described as "undetermined."

Officials said there may have been more injured and taken to other medical facilities.

The university has more than 25,000 full-time students on a campus that is spread over 2,600 acres.

The atmosphere on the Virginia Tech campus was desolate and preternaturally quiet by this afternoon. Students gathered in small groups, some crying, some talking quietly and others consoling each other.

Some students complained that they had not been notified of the first shooting on campus for more than two hours.

Kirsten Bernhards, 18, said she and many other students had no idea that a shooting had occurred when she left her dorm room in O'Shaughnessy Hall shortly before 10 a.m., more than two hours after the first shootings.

"I was leaving for my 10:10 film class," she said. "I had just locked the door and my neighbor said, 'did you check your email?'"

The university had, a few minutes earlier, sent out a bulletin warning students about an apparent shooter. But few students seemed to have any sense of urgency.

Ms. Bernhards said she walked toward her class, preoccupied with an upcoming exam and

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listening to music on her iPod. On the way, she said, she heard some loud cracks, and only later concluded they had been gunshots from the second round of shootings.

But even at that point, many students were walking around the campus with little if any sense of alarm.

It was only when Ms. Bernhards got close to Norris Hall, the second of two buildings where the shootings took place, that she realized something had gone wrong.

"I looked up and I saw at least 10 guards with assault rifles aiming at the main entrance of Norris," she recalled.

Up until today, the deadliest campus shooting in United States history was in 1966 at the University of Texas, where Charles Whitman climbed to the 28th-floor observation deck of a clock tower and opened fire, killing 16 people before he was gunned down by police. In the Columbine High attack in 1999, two teenagers killed 12 fellow students and a teacher before killing themselves.

While few confirmed details about the gunman and the motive were clear, students told reporters at WTKR, a local television station, that the gunman had been looking for his girlfriend, and at one of the locations he lined up some students and shot them all, according to Mike Mather, a reporter for the station.

President Bush offered condolences this afternoon to relatives of the victims, and said federal investigators would help the Virginia authorities in any way possible. "We hold the victims in our hearts; we lift them up in our prayers," Mr. Bush said at the White House.

President Bush was "horrified" at the news of the shooting, said Dana Perino, a White House spokeswoman, earlier in the day.

One student captured partial images, broadcast on CNN, using his cellphone video camera showing grainy dark-clad figures on the street outside of campus buildings. Popping sounds from the gunfire were audible.

"This place is in a state of panic," said a student who was interviewed on CNN, Shaver Deyerle. "Nobody knew what was going on at first."

He said that the shooting reminded him of the Columbine High School killings.

Today's shooting at Virginia Tech comes in the same week, eight years ago, as the shooting at

The police were slowly evacuating students from campus buildings and all classes have been canceled.

Images on CNN showed the police with assault rifles swarming several buildings, sirens blaring in the background and a voice over a loudspeaker warning people across the campus to take cover in buildings and stay away from windows. Many students could be seen crouching on floors in classrooms and dormitories.

The shooting was the second in the past year that forced officials to lock down the campus. In August of 2006, an escaped jail inmate shot and killed a deputy sheriff and an unarmed security guard at a nearby hospital before the police caught him in the woods near the university.

Reporting was contributed by David Johnston, Edmund L. Andrews Sarah Abruzzese, Cate Doty and David Stout.

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(b) (6)

From: (b) (6)
Sent: Friday, January 25, 2008 1:06 PM
To: (b) (6)
Cc:
Subject: FW: S&W Question on Imported frames/markings

Hi (b) (6)

Please see the response to our question on the frames from (b) (6) from FTB. I reach out to you to discuss corrective action. Some of the S&W persons are going to the shot show next week so I am hoping to notify them to begin corrective action prior to their departure.

Thanks

(b) (6)

ATF Industry Operations Investigator
Hartford, CT Area Office

(b) (6)

From: (b) (6)
Sent: Friday, January 25, 2008 11:59 AM
To: (b) (6)
Cc:
Subject: RE: S&W Question on Imported frames/markings

Hi (b) (6)

I am surprised that you are still at Smith & Wesson; you must be hating life by now. You are correct in your research on the regulations. These frames traveled in commerce and are required to be marked with importers markings within 15 days of taking possession from Customs. I spoke with the Chief and Assistant Chief and we are all in agreement on the markings issue. Good Luck.

(b) (6)

Firearms Enforcement Officer
United States Department of Justice
Bureau of Alcohol, Tobacco, Firearms and Explosives
244 Needy Road
Martinsburg, WV 25401
Work (b) (6)
Fax (b) (6)

From: (b) (6)
Sent: Thursday, January 24, 2008 5:12 PM
To: (b) (6)
Cc: (b) (6)
Subject: S&W Question on Imported frames/markings

Hello (b) (6)

I know you had answered some of the other S&W issues for us so I wanted to see if I could reach out to you on this to see if FTB has dealt with this issue. We found approximately 112-55 (125 Stat. 552) firearm frames onsite today at S&W that were

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5/6/2008

imported from (b) (4) without any importer information listed on them (b) (4) information was on the gun and serial number but no name/city/state of the importer). The frames according to S&W were imported years ago but were never marked as required for imported firearms. The guns were imported as frame "kits" with all required gun parts together except for the slide and barrel. In checking the regulations for importers I noticed they have 15 days to mark firearms with the required markings under 27 CFR 478.112(d)(2). I did not see any distinction in the regulations between "firearms" and "frames" under this regulation. Bottom line, Shouldn't S&W have marked these frames as imported by S&W within the 15 days? They evidently were going to assemble these guns into a (b) (4) S&W gun (model SW99) with the imported frame/lower from (b) (4) and a slide/barrel from S&W but for some reason never did. I also want to make sure that I am not missing anything on the import end either. Are these SW99's approved for importation? Do they meet the factoring criteria for imported pistols (not sure if this even applies or is an issue without the slide/barrel on the gun)

Thanks for the help and let me know if you have any questions or need more information.

(b) (6)

ATF Industry Operations Investigator
Hartford, CT Area Office

(b) (6)

10 Causeway Street, Room 791
Boston, Massachusetts 02222

March 14, 2008

CC (b) (6)
SRC

(b) (6)

President and COO
Smith & Wesson
2100 Roosevelt Ave.
Springfield, Massachusetts 01104

VIA FedEx

RE: Closing Conference

Dear (b) (6)

We are writing to request that Smith & Wesson attend a closing conference at the Boston Field Division in order to discuss the results of the Bureau of Alcohol, Tobacco, Firearms and Explosives' (ATF) recently concluded compliance inspection. Based on the overwhelming scope and nature of the violations, coupled with what appears to be a continued pattern of disregard for the federal requirements, there exists sufficient cause for the Director of Industry Operations to revoke Smith & Wesson's firearm importer and manufacturer licenses. Accordingly, we are requesting that Smith & Wesson meet with this office in order to show cause why such adverse action should not be initiated against its licenses. In order to assist Smith & Wesson in preparing for the meeting, we have enclosed a courtesy copy of the Report of Violations to be issued in this matter. A final copy will be issued at the closing conference.

As you are aware, between September 10, 2007 and February 29, 2008 ATF Industry Operations Investigators conducted an on-premises inspection of Smith & Wesson for the purposes of determining compliance with the Gun Control Act of 1968 and its attendant rules and regulations. In November 2007, representatives of Smith & Wesson met with ATF at the Boston Field Division to discuss the preliminary findings of the inspection. At that meeting Smith & Wesson presented this office with information concerning its response to the extensive violations noted up to that point. Additional violations were discovered subsequent to the November meeting.

Ex 89

(b) (6)

- 2 -

Due to the severity of the violations cited, we are requesting that any further communications from Smith & Wesson to ATF concerning this matter be directed to the Boston Field Division management staff. Specifically, we would request that any future correspondence or communications be addressed to ATF Division Counsel (b) (6). He can be reached at

(b) (6). Please contact (b) (6) within 15 days of receipt of this letter in order to schedule a mutually convenient date for the closing conference. You may also contact (b) (6) if you have any further questions. We look forward to your response.

Sincerely,

(b) (6)

Special Agent in Charge

Encl.

EX 89



Smith & Wesson®



(b)(6)/(b)(7)(C)

President & Chief Operating Officer

July 9, 2008

VIA EMAIL AND OVERNIGHT COURIER

Kenneth E. Houchens, Director of Industry Operations
c/o (b)(6)/(b)(7)(C) Division Counsel
Bureau of Alcohol, Tobacco, Firearms and Explosives
10 Causeway St., Room 791
Boston, MA 02222-1081

Re: Smith & Wesson Response to Report of Violations

Dear Mr. Houchens and (b)(6)/(b)(7)(C):

Pursuant to your email communications with (b)(6)/(b)(7)(C) I write in response to the Bureau of Alcohol, Tobacco, Firearms and Explosives' (ATF) Report of Violations dated June 2, 2008 (the "Report"). Smith & Wesson appreciates the significance of the Report, and recognizes that there are a number of compliance issues that need to be remediated within the company. We are grateful to the ATF for its consideration throughout this process, and are committed to implementing a number of programs and procedures in order to ensure compliance with all federal, state and local firearms laws going forward.

Attached is a legal response to the Report prepared by (b)(6)/(b)(7)(C) on our behalf, as well as a comprehensive voluntary compliance program. We have spent considerable effort in preparing our voluntary compliance program, and hope that ATF appreciates the substantial investment required to implement this program, both in terms of human resources and capital. We remain willing to discuss these compliance issues further with ATF, and welcome any comments or suggestions that you have with respect to our compliance program. We hope that once you have reviewed the materials submitted by us in response to the Report, you would agree that revocation is not warranted. We ask that, once the ATF has had an opportunity to review the materials submitted by us, we can meet with the appropriate ATF officials in Boston or at our facility in Springfield to discuss this matter further. I will ask (b)(6)/(b)(7)(C) to contact (b)(6)/(b)(7)(C) within the next two weeks in the hopes that they can set up a date to meet to discuss this matter further.

I look forward to hearing from you.

Sincerely,

(b)(6)/(b)(7)(C)

President & Chief Operating Officer

(b)(6)/(b)(7)(C)

ATTORNEY AT LAW

(b)(6)/(b)(7)(C)

FAIRFAX, VIRGINIA 22030

(b)(6)/(b)(7)(C)

(b)(6)/(b)(7)(C)

July 8, 2008

Kenneth E. Houchens, Director of Industry Operations
c/o **(b)(6)/(b)(7)(C)** Division Counsel
Bureau of Alcohol, Tobacco, Firearms and Explosives
10 Causeway St., Room 791
Boston, MA 02222-1081

Re: Smith & Wesson Response to Report of Violations

Dear Mr. Houchens and **(b)(6)/(b)(7)(C)**

I am writing to you as counsel for Smith & Wesson in hopes of clarifying certain legal issues arising in the Report of Violations dated June 2, 2008 (hereafter “the Report”). Before doing so, I wish to reiterate that Smith & Wesson is committed to being in compliance with all applicable laws and regulations and wishes to cooperate in every possible way with ATF toward that end. This letter is being submitted simultaneously with the Smith & Wesson Voluntary Compliance Program.

No Willful Violations

“[W]hen determining the willfulness of conduct, we must determine whether the acts were committed in deliberate disregard of, or with plain indifference toward, either known legal obligations or the general unlawfulness of the actions.” *RSM, Inc. v. Herbert*, 466 F.3d 316, 321 (4th Cir. 2006). *RSM* found that “the long history of repeated failures, warnings, and explanations of the significance of the failures, combined with knowledge of the legal obligations, readily amounts to willfulness as used in 18 U.S.C. § 923(e).” *Id.* at 322. Applying these criteria, Smith & Wesson has committed no willful violations, and has no history of warnings whatever.

The Report does not allege that any of the violations found were willful. As you know, before this inspection Smith & Wesson had not had the benefit of an ATF general inspection since 1989. I use the term “benefit” because the broad purpose of such an inspection is to promote compliance by having ATF inspectors with expertise bring to the licensee’s attention

problems with reference to recordkeeping and inventory so that corrective action can be taken.

When ATF conducted the compliance inspection in 1989, no violations were cited. The acquisition/disposition system in use until recently was the same system concept as used in 1989 with some enhancements. Smith & Wesson therefore assumed that its recordkeeping practices were proper.

The owners, directors, and management of Smith & Wesson have changed greatly in the past years. Many of the compliance issues identified in the Report stemmed from policies and practices dating back to the 1980s and perhaps even the 1970s. The current owners, directors, and management are committed to pursue compliance zealously and beyond what is legally required.

Violations beyond the Statute of Limitations

Smith & Wesson is committed to resolving recordkeeping issues. A major portion of the problems discussed in the Report originated more than two decades ago, and were not cited by ATF as violations during the 1989 compliance inspection.

Should ATF contemplate adverse action against Smith & Wesson, it may not do so for any violations that occurred more than five years ago. 28 U.S.C. § 2462 provides that “a proceeding for the enforcement of any civil fine, penalty, or forfeiture, pecuniary or otherwise, shall not be entertained unless commenced within five years from the date when the claim first accrued.”¹ The applicability of § 2462 to proceedings under § 923(e) was recognized in *Article II Gun Shop, Inc. v. Gonzales*, 441 F.3d 492, 496-97 (7th Cir. 2006). In that case, the government conceded that “ATF could not revoke Gun World’s license because of” violations more than five years earlier.² *Id.* at 496.

That said, Smith & Wesson wishes to resolve all outstanding issues with ATF and seeks ATF’s assistance in ensuring compliance with all laws and regulations.

¹See *Johnson v. Securities & Exchange Commission*, 87 F.3d 484, 489 n.6 (D.C. Cir. 1996) (holding about § 2462 that “the term ‘penalty,’ for the past two centuries, has been commonly used by legislators and courts in describing license suspensions and revocations.”); *H. P. Lambert Co. v. Secretary of Treasury*, 354 F.2d 819, 822 (1st Cir. 1965) (“the general policy of statutes of limitations is so deeply ingrained in our legal system that a period of limitation made generally applicable to such proceedings, as is section 2462, is not to be avoided unless that purpose is made manifestly clear.”).

²See Brief of the Bureau of Alcohol, Tobacco, Firearms and Explosives (“True enough, ATF could not revoke Gun World’s license because of these [five-year-old] facts”).

No Legal Duty Exists to Conduct Inventories

While having a duty to report a theft or loss when discovered, a licensee has no duty to take an inventory. ATF sought to adopt such a regulation but it has been vetoed by Congress. In 2000, ATF proposed a new regulation entitled “Inventory,” 27 C.F.R. § 178.130, which would have read in part:

(a)(1) Each licensed manufacturer, licensed importer, and licensed dealer must take at least one true and accurate physical inventory each year. . . .

(b) Every physical inventory must be reconciled with the record of receipt and disposition required under this part. Any theft or loss of a firearm disclosed during inventory must be reported within 48 hours after its discovery in accordance with the requirements of Sec. 178.39a. . . .³

Congress has forbidden the adoption of the above proposed regulation in annual appropriations riders which state: “That no funds made available by this or any other Act shall be expended to promulgate or implement any rule requiring a physical inventory of any business licensed under section 923 of title 18, United States Code” Consolidated Appropriations Act, 2008, P.L. 110-161, 121 Stat. 1844, 1904 (2007). Accordingly, a licensee has no legal duty to take a physical inventory or to reconcile any inventory with the record of receipt and disposition.

The Report here alleges that S&W failed to report losses on a timely basis. The basis of this allegation in part is that S&W took a financial inventory in a given storage area which did not reveal a complete inventory, and then failed to conduct a complete physical inventory by serial number there and at other places of storage in the facility. S&W has explained that a financial inventory is not the same as a physical inventory, and that it did not conduct a comprehensive physical inventory in every location throughout the entire facility. Accordingly, to the extent that any alleged violation is predicated on S&W not taking a physical inventory, the allegation is precluded by the annual appropriations riders passed by Congress.

Nonetheless, S&W voluntarily agrees to conduct physical inventories, to reconcile inventories with records of receipt and disposition, and to report losses found on a timely basis. For details, see the Smith & Wesson Voluntary Compliance Program.

The 48-Hour Deadline to Report a Loss Begins When the Loss is “Discovered,” Not When the Inquiry Begins

The Report alleges instances in which Smith & Wesson did not comply with 18 U.S.C. § 923(g)(6), which provides: “Each licensee shall report the theft or loss of a firearm from the

³Notice of proposed rulemaking, Notice No. 902, 65 Federal Register, No. 167, 52054-52056 (August 28, 2000).

licensee's inventory or collection, within 48 hours after the theft or loss is discovered, to the Attorney General and to the appropriate local authorities.” S&W disputes that it did not report losses from inventory within 48 hours of “discovery” thereof. However, as a result of recent ATF initiatives and communications with the industry, S&W believes that a protocol regarding interpretation and application of § 923(g)(6) has been reached and that ATF and S&W are in agreement.

The duty to report a stolen or lost firearm within 48 hours of when “the theft or loss is discovered” means that the licensee must identify the missing firearm as stolen or lost, not just that the firearm cannot be found at a given moment in time. The 48-hour clock does not begin to tick when the licensee decides to locate a specific firearm or when an employee first attempts to locate it. It begins to tick when the conclusion is reached, based on all information available, that the firearm is lost. As succinctly put by (b)(6)/(b)(7)(C), Deputy Assistant Director, Field Operations: “Clock begins running when you are reasonably certain that the firearm is missing.” ATF Manufacturer Seminar, May 8, 2008.

Until such time as the licensee with due diligence “discovers” that a theft or loss has occurred, it would be improper to report it as a theft or loss. The licensee must avoid filing a false or inaccurate report. ATF Form 3310.11 concludes with a certification for the licensee to sign “that the information contained in this report is true and correct.” The form is sent to the ATF National Tracing Center (NTC) for entry into its database. Given this certification and the NTC’s need for accurate information, the licensee must actually discover that the firearm is stolen or lost, and not merely misplaced or unable to be located at the moment.

S&W handles thousands of firearms per day. If an enquiry is received concerning the status of a firearm, all work at the factory does not cease that moment to search for that firearm, and the 48-hour clock does not begin when the enquiry is first received. If a person in one department cannot find a specific firearm, others need to search. It is only after all probable locations are searched that the conclusion may be reached that a firearm is missing. Within 48 hours of that discovery the firearm is reported missing to ATF and local law enforcement.

The Report here states that S&W did not report losses within 48 hours (e.g., firearms missing in November 2007 and January 2008). However, S&W was not reasonably certain that these firearms were missing at those times, and once the searches revealed that they were indeed missing, S&W filed loss reports within 48 hours. The allegations about these specific firearms were based on emails which S&W voluntarily shared with inspectors. These emails fail to inform that when an employee does not locate a firearm in a specific location, enquiries are made to other employees at staff meetings, telephone calls, and otherwise to determine whether the firearm may be located elsewhere.⁴

⁴Regarding the first cited incident, an email dated Nov. 16, 2007, stated that the frame and cylinder of a returned customer handgun (H41188) could not be found in the refinishing department. But that was only the beginning of the search, not the date the loss was “discovered.” Further

ATF has recently focused discussions on the reasonableness of the time period from when an enquiry is first made to locate a firearm, through the search process and the final conclusion that the firearm is missing. For instance, at the ATF Manufacturer Seminar, May 8, 2008, Acting Assistant Director (b)(6)/(b)(7)(C) Enforcement Programs and Services, opined that two weeks would be reasonable, but six months would be unreasonable, for a manufacturer to ascertain that a firearm is missing. Along with other manufacturers, S&W looks forward to continued dialogue with ATF on this issue.

S&W is committed to streamlining its process to search for firearms with the goal of reasonably ascertaining within the shortest possible time whether a firearm is missing. For further details, see the Smith & Wesson Voluntary Compliance Program. Once it discovers that a firearm is missing, S&W will continue strictly to adhere to the 48-hour reporting requirement.

As a Corporation, S&W May Act Through Agents, Employees, and Representatives

The Report alleges that S&W violated several provisions by shipping firearms to (b)(6)/(b)(7)(C). However, (b)(6)/(b)(7)(C) was a paid, bona fide agent of S&W, which shipped him firearms for the business purposes of promoting and marketing such firearms.⁵ Accordingly, none of the above laws and regulations cited are applicable.

Smith & Wesson hereby provides the following further information about (b)(6)/(b)(7)(C) agency status:

Since 1991, S&W has sponsored (b)(6)/(b)(7)(C) to compete in various shooting sports events. From approximately 1996 to the present, (b)(6)/(b)(7)(C) has served as a full-time, paid, bona fide agent of S&W. As S&W's agent, (b)(6)/(b)(7)(C) has, subject to S&W's direction and control, performed a variety of services in furtherance of

communications (including those not reflected in the emails) failed to locate the firearm. A loss report was filed on Jan. 28, 2008, which was within 48 hours of S&W concluding that the firearm was lost.

In the other incident, handguns (b)(6) were found missing from the pistol assembly-warranty area on Jan. 7, 2008. Followup searches in other locations were unsuccessful. A loss report was filed on Jan. 23, 2008, within 48 hours of the time it was concluded that the firearms were lost.

⁵“An agency relationship is created when there is mutual consent, express or implied, that the agent is to act on behalf and for the benefit of the principal, and subject to the principal's control.” *Theos & Sons, Inc. v. Mack Trucks, Inc.*, 431 Mass. 736, 742 (2000), citing *Rest. 2nd of Agency* §§ 1, 14 (1958). It is well established that an agent's authority may be limited to very specific objects. E.g., *Royle v. Worcester Buick Co.*, 243 Mass. 143, 145-46 (1922).

S&W's business interests, including but not limited to, representing S&W at shooting sports events, coordinating shooting sports events on behalf of S&W, and evaluating S&W firearms. When providing services on behalf of S&W, (b)(6)(b)(7)(C) identifies himself to the public as a representative of S&W. Time spent and expenses incurred by (b)(6)(b)(7)(C) in the performance of his duties for S&W are accounted for on invoices and expense reports submitted to S&W for payment. (b)(6)(b)(7)(C) was S&W's agent, on or about September 29, 2007, when S&W shipped him firearms for the business purposes of promoting and marketing such firearms at a shooting sports event.

Revenue Ruling 69-248, 1969-1 C.B. 360, recognized that "there is no provision in 18 U.S.C. Chapter 44 which would prohibit licensees from shipping, transporting or delivering firearms in interstate commerce to themselves for business purposes (exclusive of sale or disposition) in care of their employees, agents or representatives." It continues:

Licensees engaged in the firearms or ammunition business typically are corporations which can only conduct their operations through employees, agents and representatives. In the course of such operations, it is frequently necessary to ship, transport or deliver firearms in interstate commerce for bona fide business purposes such as display, advertising, research, testing, comparative evaluations and marketing promotions. In such cases, title to, and ultimate control of, the firearms remain in the licensee even though the firearms or ammunition are placed in the temporary custody of an employee, agent or representative for limited lengths of time.

Revenue Ruling 69-248 adds that it is applicable to the situation of the licensee's "nonlicensed employees, agents or representatives for bona fide business purposes (exclusive of sale or disposition), where the actual custody of the firearms is transferred for a limited period of time and where title and ultimate control of the firearms remain in such licensee." Moreover, "When no longer needed by the employee, agent or representative for the business purpose for which received, disposition of all such firearms must be by return to the licensee . . ."

Revenue Ruling 69-248 was issued to clarify that the Gun Control Act of 1968 did not prohibit a licensee from shipping a firearm in interstate commerce to its own agent in violation of the prohibition on shipping such firearm to a non-licensee.⁶ The Brady Act of 1994 did not

⁶18 U.S.C. § 922(a) provides in part:

It shall be unlawful – . . .

(2) for any importer, manufacturer, dealer, or collector licensed under the provisions of this chapter to ship or transport in interstate or foreign commerce any firearm to any person other than a licensed importer, licensed manufacturer, licensed dealer, or licensed collector . . .

change this in any manner – it only prohibited a licensee from transferring a firearm to a non-licensee without a background check.⁷ Both acts recognize the fundamental difference between licensees and non-licensees, and the Brady Act did nothing to change the principle that licensees act through their agents, employees, and representatives.

If ATF wishes to change its long-established view that licensees may act through agents and representatives, the public should be afforded notice by repeal of Revenue Ruling 69-248 and by rulemaking consistent with 18 U.S.C. § 926(b).⁸ At the ATF Manufacturer Seminar on May 8, 2008, ATF speakers stated that further clarification of ATF's views would be announced and posted on the ATF website. S&W will review that carefully when posted.

While Smith & Wesson committed no violation by shipping firearms to its agent (b)(6)/(b)(7)(C), it seeks to comply with ATF's legal interpretations. S&W will continue reviewing its own procedures for compliance with the law and regulations and seeks ATF's assistance in doing so.

Conclusion

Smith & Wesson is cognizant of the need to comply with all pertinent laws and regulations. S&W's above legal response to the Report of Violations dated June 2, 2008, in no way should be interpreted to discount S&W's wish to comply or to seek ATF's guidance in doing so. Enclosed with this correspondence, S&W is proposing specific compliance measures and ATF inspection authority above and beyond what the law requires. We thank you for your cooperation.

Sincerely,

(b)(6)/(b)(7)(C)

⁷18 U.S.C. § 922(t)(1) provides in part:

Beginning on the date that is 30 days after the Attorney General notifies licensees under section 103(d) of the Brady Handgun Violence Prevention Act that the national instant criminal background check system is established, a licensed importer, licensed manufacturer, or licensed dealer shall not transfer a firearm to any other person who is not licensed under this chapter, unless– [remainder deleted] . .

⁸*See Rice v. Rehner*, 463 U.S. 713, 730 n.13 (1983) (“that early position . . . is surely more indicative of congressional intent in 1953 than a 1971 opinion to the contrary”).

SMITH & WESSON VOLUNTARY COMPLIANCE PROGRAM

The Goals of the Voluntary Compliance Program are as follows:

1. Ensure compliance with all federal firearms laws, including the Gun Control Act, the National Firearms Act and the Arms Export Control Act, as well as all pertinent state and local firearms laws and ordinances.
2. Ensure public safety by enhancing firearm control, with additional emphasis on improved auditing and verification procedures.
3. Provide transparency to federal, state and local government agencies relative to compliance.

Smith & Wesson's voluntary compliance program represents a significant change to its existing policies and procedures, and will require a substantial investment, both in terms of human resources and capital. S&W is in the process of implementing this comprehensive program in order to meet our goal of corporate compliance.

A. CREATE A CORPORATE ATF COMPLIANCE DEPARTMENT.

Smith & Wesson will establish an independent internal ATF Corporate Compliance Department to ensure compliance with all federal, state and local firearms laws. The Department will conduct reviews and audits of all Smith & Wesson firearms operations and records, including its firearm serial number control records and procedures, to assess compliance with the law and ensure remediation of any issues uncovered by those audits. The Department will be led by a director-level employee, who will report directly to Smith & Wesson Holding Corporation, and will be entirely independent from the firearms business. Smith & Wesson is conducting a search for a candidate to fill the position of Director of ATF Compliance. The search is underway, and several candidates have been interviewed. We expect to complete the selection process by the end of July 2008. A copy of the charter of the Office of Compliance is attached to this document.

B. CONDUCT FREQUENT AUDITS.

Smith & Wesson is establishing an internal serial number auditing process. This process will include both sampling and complete serial number audits. As a part of the process, Smith & Wesson agrees to conduct full serial number based audits quarterly and report its findings and resulting corrective actions from the audits to the ATF quarterly, for a period of two years. The Corporate ATF Compliance Department will lead the reviews and audits in a manner consistent with the ATF regulations found in Title 27 of the Code of Federal Regulations, and Smith & Wesson's internal processes

SMITH & WESSON VOLUNTARY COMPLIANCE PROGRAM

and control documents. Smith & Wesson has retained Wally Nelson, former Deputy Assistant Director of the ATF, to perform a complete review of its serial number master procedure, known internally as QP-41. A copy of the current QP-41 is attached to this document. Smith & Wesson will provide copies of its updated procedures to the ATF as they are issued.

The Corporate ATF Compliance Department, along with each of Smith & Wesson's Plant Managers, will be held accountable for serial number control and compliance as part of our annual performance management process.

C. CONSENT TO MORE FREQUENT ATF WARRANTLESS INSPECTIONS.

Smith & Wesson agrees to waive the limitation that precludes ATF from performing warrantless inspections more frequently than once every 12 months. Smith & Wesson will allow the ATF to perform warrantless compliance inspections of Smith & Wesson every six months for a period of two years. The first compliance inspection can take place one month after the new serial number system outlined in this document is implemented. The anticipated date for the implementation of the new system is December 1, 2008. Smith & Wesson will notify ATF in writing of any changes to this implementation date.

D. ALLOW ATF IOI ONSITE FULL-TIME.

Smith & Wesson offers to allow an ATF IOI to be onsite at Smith & Wesson for one full year to work closely with Smith & Wesson's Director of ATF Compliance in the creation, improvement, and validation of its internal compliance process. The ATF IOI will act as teacher, mentor and coach, and will not be used for the purpose of conducting official ATF compliance inspections. If it is lawful to do so, Smith & Wesson would agree to defray the expense incurred by the ATF for this assignment. Maintaining an ATF IOI onsite at Smith & Wesson for one year could benefit both the ATF and Smith & Wesson:

Benefit to ATF:

- An IOI with intimate knowledge of Smith & Wesson's compliance system.
- An IOI that understands compliance challenges of large manufacturers and how to overcome them.

Benefit to Smith & Wesson:

- Assistance in accomplishing its compliance process.
- Transparency in communications with the ATF.

SMITH & WESSON VOLUNTARY COMPLIANCE PROGRAM

E. IMPLEMENT NEW SERIAL NUMBER CONTROL SYSTEM.

Smith & Wesson will implement a new computer-based serial number control system at its Springfield facility to significantly improve control and record keeping compliance. The system will be implemented over the summer and fall and have a December 1, 2008 "go live" date. The ATF reviewed the system requirements document for this initiative and met with Smith & Wesson for discussion and comment. There will be future meetings with ATF personnel to review key issues as the implementation continues. ATF will be provided a copy of the final System Requirements Document to assist them in their compliance inspections.

The project to implement a new serial number system began in February of 2008. Based on current third party projections, the system will be implemented by December of 2008. Total cost to implement the system will be approximately eight hundred thousand dollars (\$800,000).

F. CONSOLIDATE SERIALIZED PRODUCTS.

(b)(4)

G. RECONCILE INVENTORY.

With regard to the inventories mentioned in B above, Smith & Wesson agrees to continue to search for any firearms missing from inventory after the initial investigation requires it to report on ATF Form 3310.11, Firearms Theft/Loss Report. These steps will include root cause and corrective action analysis of serial number control. Smith & Wesson believes that by performing frequent serial number based audits and fixing process problems as they arise, integrity of firearm movement in the facility can be maintained.

H. EXPAND SEARCH IN RESPONSE TO TRACE REQUESTS.

Smith & Wesson agrees to implement additional firearms tracing procedures, in response to trace requests, in those cases involving firearms that may be part of legacy record keeping gaps. These additional steps will involve searches for invoices in archives, inferential checks on firearms with adjacent or similar serial numbers and other measures, so that all efforts to locate the disposition of these firearms are exhausted.

SMITH & WESSON VOLUNTARY COMPLIANCE PROGRAM

I. IMPLEMENT INDEPENDENT SECURITY AUDITS.

Smith & Wesson will contract with a third party to perform comprehensive facility security audits within 30 days of ATF's acceptance of this compliance plan. Smith & Wesson will provide to the ATF a copy of the firm's audit report, as well as any corrective actions, as soon as they are taken.

J. RETAIN EXPERT TO TRAIN EMPLOYEES AND VALIDATE PROCEDURES.

Smith & Wesson will retain (b)(6)/(b)(7)(C), former Deputy Assistant Director of the ATF, and others, for a period of two years to support training and audit compliance process integrity. (b)(6)/(b)(7)(C) will be responsible for training employees on the laws and the company's compliance responsibilities, and will team with the company's Corporate ATF Compliance Department to ensure that its work is comprehensive in scope and performance. He will also verify that any corrective actions required by this office have been completed.

SMITH & WESSON CORPORATE ATF COMPLIANCE CHARTER

Policy Statement

Smith & Wesson will maintain a Corporate ATF Compliance Department primarily as a means of providing senior management with information regarding compliance with all Federal firearms laws, including the Gun Control Act, the National Firearms Act and the Arms Export Control Act, as well as with all pertinent state and local firearms laws and ordinances. The Office of Compliance will be guided in reviews and audits by the ATF regulations found in Title 27 Code of Federal Regulations and by Smith & Wesson internal process and control documents, in particular, QP-41 rev 4, Serial Number Master Procedure.

Staff Responsibilities

Corporate ATF Compliance, along with each Plant Manager, is responsible for the ongoing compliance relating to Federal firearms laws. The department works with external consultants on behalf of management to establish, document, and test internal controls and ATF required records within the company and remediate deficiencies where possible. Other traditional internal compliance work occurs as time permits, as well as special projects that fulfill the goals of company management. In addition, Corporate ATF Compliance personnel will periodically attend offsite training courses to maintain proficiency and to keep current with Federal firearm laws and firearm compliance standards.

Reporting Relationships

The Corporate ATF Compliance department reports to the Corporate Controller, who reports to the Chief Financial Officer. The corporate Director of ATF Compliance coordinates meetings with senior management to keep them apprised of compliance results. In addition, the department coordinates Steering Committee meetings as they relate to ATF compliance testing and results.

Independence

Independence is essential for the effective and efficient operation of the Corporate ATF Compliance department. Senior management of the Company requires that compliance activities remain free of the influence of organizational elements. This holds true of compliance programs, frequency and timing of compliance work, and the content of written reports.

SMITH & WESSON CORPORATE ATF COMPLIANCE CHARTER

Scope of Compliance Activities

Corporate ATF Compliance activities will encompass, as deemed appropriate by the Corporate Controller or senior management, independent, written, reviews and evaluations of any and all operations and activities to determine:

- Reliability, consistency, and integrity of the ATF compliance process
- Ongoing compliance with current firearms laws, policies, plans, and regulations that could have a material impact on operations
- Effectiveness of corrective actions
- Effectiveness of facility security

Access and Confidentiality

To accomplish its goals, Corporate ATF Compliance, with permission from the Corporate Controller and the Chief Financial Officer, is authorized to have full, free, and unrestricted access to all corporate activities, operations, records, programs, property, and personnel. Under special circumstances, Corporate ATF Compliance is authorized to communicate directly with any member of the senior management team and the Chief Executive Officer. It is expected that Corporate ATF Compliance will exercise discretion and confidentiality with any information it obtains as a result of its work.

Responsibility for Corrective Action/Remediation

Departmental managers or directors are responsible for taking appropriate action based on compliance results or deficiencies reported to them by the Corporate ATF Compliance department. If proper corrective action is not taken, Corporate ATF Compliance is responsible for presenting issues to the Corporate Controller, to the appropriate senior manager, or the Chief Executive Officer directly, if necessary.

Limitation of Authority and Responsibility

In performing their functions, the Corporate ATF Compliance staff cannot have direct authority over or responsibility for any of the activities reviewed or audited. Corporate ATF Compliance will not develop, install, prepare, or make management decisions that would compromise their independence. Corporate ATF Compliance can, and should, make recommendations for policies and procedures to be implemented by appropriate management.

BUREAU OF ALCOHOL, TOBACCO, FIREARMS AND EXPLOSIVES

In the Matter of:
Smith & Wesson Corp.
2100 Roosevelt Ave.
Springfield, MA 01104

Introduction

In recognition of a mutual interest in protecting public safety, the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) and Smith & Wesson Corp. (Smith & Wesson) hereby enter into the following cooperative settlement agreement. As one of the nation's largest firearms manufacturers, Smith & Wesson acknowledges the need to position itself at the forefront of industry compliance efforts. To that end, ATF recognizes the efforts and cooperation of Smith & Wesson's current leadership in comprehensively addressing deficiencies brought to their attention during ATF's compliance inspection process.

Statement of Purpose

Solely for the purpose of resolving issues arising from a compliance inspection at Smith & Wesson, the Government and Smith & Wesson, FFL Nos. 6-04-013-07-1B-01684 (Manufacturer), 6-04-013-08-1B-01685 (Importer) and 6-04-013-01-1B-01683 (Dealer), hereby stipulate and agree to the following statement of facts and conditions of resolution:

Statement of Facts

1. Smith & Wesson was subject to a compliance inspection conducted by ATF Industry Operations Investigators (IOIs) commencing September 2007.
2. The inspection results indicated that Smith & Wesson was not in full compliance with the requirements of the Gun Control Act of 1968 (GCA).
3. Sufficient evidence exists to support the following findings of fact and conclusions of law:

- a. That between 2002 and 2006, in (b)(3) 112 Public Law 55 125 STAT 552 instances, Smith & Wesson failed to enter into their A&D Record Book the manufacturer name and/or country of manufacture for (b) (4), that they were aware of this requirement and that these instances constitute violations of 27 C.F.R. § 478.122(a). During this period, Smith & Wesson maintained such information in separate records.
 - b. That between 2002 and 2006, in (b)(3) 112 Public Law 55 125 STAT 552 instances, Smith & Wesson failed to timely enter and/or entered inaccurate acquisition dates into their A&D records for (b) (4) that they were aware of this requirement and that these instances constitute violations of 27 C.F.R. § 478.122(a). During this period, Smith & Wesson maintained such information in separate records.
 - c. That in (b)(3) 112 Public Law 55 125 STAT 552 instances Smith & Wesson failed to record the acquisition of firearms in their A&D Record Book, that they were aware of this requirement and that these instances constitute violations of 27 C.F.R. § 478.123(a).
 - d. That between 2006 and 2007, in (b)(3) 112 Public Law 55 125 STAT 552 instances, Smith & Wesson failed to enter into their A&D Record Book information reflecting from whom a firearm was received, that they were aware of this requirement and that these instances constitute violations of 27 C.F.R. § 478.123(a). During this period, Smith & Wesson maintained such information in separate records.
4. The violations noted above were committed in or affecting interstate or foreign commerce.
 5. ATF acknowledges that, subsequent to the initiation of the above inspection, Smith & Wesson has expended considerable resources in their efforts to achieve compliance.

Conditions of Resolution

6. The parties understand that this agreement is solely for the purpose of resolving issues arising from the compliance inspection and is not an acknowledgment of criminal guilt.
7. The obligations of the licensee shall be considered satisfied when the following conditions are met:
 - a. Smith & Wesson executes and performs the requirements set forth in this agreement;
 - b. Smith & Wesson completes payment in lieu of forfeiture in accordance with the terms set forth below.
8. As part of this agreement, Smith & Wesson waives its right to formal notice of the allegations against it and to administrative hearings to review the violations set forth above. Rather, Smith & Wesson agrees that these matters will be resolved under the terms of this agreement. Provided the actions of the Director of Industry Operations are in accordance with the terms of this agreement, Smith & Wesson waives its right to challenge those decisions in any future proceedings.
9. Smith & Wesson agrees to maintain for a period of three years from the date of this agreement an internal Corporate Compliance Department to ensure compliance with all federal, state and local firearms laws.
10. Smith & Wesson agrees to conduct full serial number based audits quarterly and report its findings and resulting corrective actions from the audits to the ATF for a period of three years.
11. Smith & Wesson agrees to waive the limitation precluding ATF from performing warrantless inspections more frequently than once every 12 months. Smith & Wesson will allow the ATF to perform warrantless compliance inspections of Smith & Wesson every six months for a period of three years. The first compliance inspection can commence one month after implementation of the new serial number system referenced in this agreement.

12. Smith & Wesson will allow an ATF IOI to be onsite at Smith & Wesson for one full year to work closely with Smith & Wesson's Director of Compliance in the creation, improvement, and validation of its internal compliance process. The ATF IOI will not be used for the purpose of conducting official ATF compliance inspections. Additionally, any violations of the Gun Control Act or National Firearms Act, either observed or known to the ATF IOI, will be communicated to ATF's Boston Field Division.
13. Smith & Wesson will maintain for a period of 3 years from the date of this agreement consolidated vaults where serialized products can be held.
14. Smith & Wesson agrees to comply with the relevant laws and regulations and report any firearms missing to ATF subsequent to determining to a reasonable degree of certainty that the firearms cannot be accounted for. Under no circumstances shall firearms be reported missing later than 30 days from the date at which the firearms were first unaccounted for.
15. Smith & Wesson agrees to continue to search all available records and physical locations for any firearms missing from inventory subsequent to reporting the loss to ATF. The search will be deemed conclusive once all available records and physical locations have been exhausted.
16. Smith & Wesson, in order to meet their obligations under the relevant laws and regulations, agrees to implement additional firearms tracing procedures in response to trace requests, including, but not limited to those requests involving firearms that may be part of legacy record keeping gaps. As needed, these efforts will include, but are not limited to, attempting to confirm that the submitting agency provides accurate information, searching archived records and conducting inferential checks so that all reasonable efforts to locate the disposition of any firearms are exhausted.

17. Smith & Wesson agrees to perform annual comprehensive facility security audits for a period of three years from the date of this agreement. Smith & Wesson will provide to ATF a copy of the firm's audit report, as well as any corrective actions, within 30 days of the conclusion of the audit.
18. Smith & Wesson will retain an independent expert for a period of three years to support training and audit compliance process integrity.
19. In lieu of ATF initiating civil forfeiture proceedings regarding property subject to forfeiture for violations cited above, Smith & Wesson hereby agrees to administratively forfeit to ATF five hundred thousand dollars (\$500,000), a sum which represents a settlement between the parties of the property subject to forfeiture pursuant to 18 U.S.C. § 924(d) for Smith & Wesson's violations of 18 U.S.C. § 923(g) as set forth in Section 3 of this agreement. This settlement is not a fine or penalty and is not designed to be punitive in nature. Said payments shall be made as follows: The first payment in the amount of two hundred thousand dollars (\$200,000) shall be made within sixty (60) days of the execution of this agreement. The second and third payments in the amount of one hundred and fifty thousand dollars (\$150,000), respectively, shall be made on the first and second anniversary of the execution of this agreement.
20. ATF will not commence or recommend any additional civil forfeiture proceedings against Smith & Wesson as a result of any conduct known to it as of the date this agreement is executed. The signing of this agreement constitutes full and complete notice to Smith & Wesson under applicable law. Smith & Wesson agrees not to contest or appeal this payment in lieu of forfeiture.
21. This agreement resolves all civil and administrative violations committed by Smith & Wesson known to ATF as of the date this agreement is executed.
22. ATF agrees that no license held by Smith & Wesson will be revoked or denied, on the basis of any conduct known to

ATF as of the date this agreement is executed provided that the conditions of this agreement are fully met. However, Smith & Wesson agrees that the violations set forth in this agreement and any other violations or conduct known to ATF as of the date of this agreement can be used to establish willfulness at a particular location in a future administrative action under 18 U.S.C. 923 to revoke a license (or, in the case of a renewal application, to deny the application) held by Smith & Wesson for the same or similar violations committed at that same location after the date this agreement is executed.

23. This stipulated and agreed upon, all parties, as acknowledged by their signatures, enter into agreement.

SMITH & WESSON CORP.

By:

(b) (6)

Title: Corp. Counsel & Secretary

Date: January 14, 2009

BUREAU OF ALCOHOL, TOBACCO,
FIREARMS AND EXPLOSIVES

By:

(b) (6)

Title: Special Agent in Charge

Date: January 14, 2009

Assignment and Report

1. OPERATING NAME AND ADDRESS (INCLUDE ZIP CODE AND COUNTY) SMITH & WESSON CORP. 2100 Roosevelt Ave. Springfield, MA 01104, Hampden	2. U.I. NUMBER (ORG. SEG. CODE, ASSIGNMENT NO., P.P.C.) 762055-2013-0057-B1B		
	3. PERMIT/LICENSE NUMBER 604013084B01685	4a. TARGET DATE 8/30/2013	4b. TARGET HOURS 100
	5. REQUESTED BY (SIGNATURE, TITLE AND DATE)		

6. ATF OFFICER(S) ASSIGNED

(b)(6) - Assigned Investigator
(b)(6) - Assigned Investigator
(b)(6) - Assigned Investigator
(b)(6) - Assigned Investigator
(b)(6) - Assigned Investigator
(b)(6) - Lead Investigator
(b)(6) - Assigned Investigator
(b)(6) - Assigned Investigator
(b)(6) - Assigned Investigator

7. ASSIGNED BY (SIGNATURE, TITLE AND DATE)

(b)(6), Area supervisor, 12/12/2012

8. PURPOSE/SPECIAL INSTRUCTIONS

FMI

9. INSPECTION RESULTS		<input type="checkbox"/> CHECK IF NO VIOLATIONS, ADJUSTMENTS, ETC		10. TRAVEL EXPENSES (OPTIONAL)	
NO. OF VIOLATIONS	4	NO. OF REFERRALS		2111 - PER DIEM	
NO. OF TECS CHECKS	2	NO. OF TECS HITS		2112 - P.O.A.	
NO. OF TAX ADJUSTMENTS		\$ VALUE OF TAX INCREASES		2113 - COMM. AIR	
		\$ VALUE OF TAX DECREASES		2114 - RENTAL CAR	
NO. OF ASSESSMENTS		\$ VALUE OF ASSESSMENTS		2115 - GPV EXPENSES	
NO. OF CLAIMS		\$ VALUE OF CLAIMS		2116 - MISC.	
NO. OF TAX PERIODS		\$ VALUE OF TAXES VERIFIED		TOTAL \$ FOR INSP.	

11. ATF OFFICER'S RECOMMENDATION

Submitted by (b)(6) - Area Supervisor

Submitted on: 09/28/2013

S&W had one repeat violation of 27 CFR 478.122(a), which meets the level of a Warning Conference due to the repeat violation, and the fact that S&W exceeded the threshold of (b)(6) or more of their total acquisitions being entered untimely into their A&D record.

S&W stated that they were unaware of the August 27, 2010 Open Letter to FFL Importers that addressed correct dates of entry for imported firearms. They stated they felt that they were entering the firearms correctly, basing the entries on arrival at their plant and gauging entries into the A&D within 15 days on the plant arrival date. S&W acknowledged their failure to stay on top of the importer information, Aug. 2010 open letter. They stated they know understand and will immediately begin adhering to the guidelines of the open letter.

Based on the findings IOI (b)(6) recommends a Warning Letter in lieu of Warning Conference.

Viols WL ONLY and No Recall Inspection

12. TIME ACCOUNTING DATA

ATF OFFICER'S NAME (MONTH, YEAR, HOURS)		(b)(6)
FEB 2013		9.00
ATF OFFICER'S SUBTOTAL	9.00	ATF OFFICER'S SIGNATURE
ATF OFFICER'S NAME (MONTH, YEAR, HOURS)		(b)(6)
JAN 2013		7.00
FEB 2013		28.00
MAR 2013		73.00

Assignment and Report

1. OPERATING NAME AND ADDRESS (INCLUDE ZIP CODE AND COUNTY) SMITH & WESSON CORP, 2100 Roosevelt Ave. Springfield, MA 01104, Hampden	2. U.I. NUMBER (ORG. SEG. CODE, ASSIGNMENT NO., P.P.C.) 762055-2013-0057-B1B		
	3. PERMIT/LICENSE NUMBER 604013084B01685	4a. TARGET DATE 8/30/2013	4b. TARGET HOURS 100
	5. REQUESTED BY (SIGNATURE, TITLE AND DATE)		

12. TIME ACCOUNTING DATA

ATF OFFICER'S NAME (MONTH, YEAR, HOURS) (b)(6)		
MAY 2013	16.00	
JUN 2013	6.00	
JUL 2013	16.00	
AUG 2013	4.00	
SEP 2013	8.00	
ATF OFFICER'S SUBTOTAL	158.00	ATF OFFICER'S SIGNATURE
ATF OFFICER'S NAME (MONTH, YEAR, HOURS) (b)(6)		
FEB 2013	21.00	
MAR 2013	33.00	
ATF OFFICER'S SUBTOTAL	54.00	ATF OFFICER'S SIGNATURE
ATF OFFICER'S NAME (MONTH, YEAR, HOURS) (b)(6)		
FEB 2013	10.00	
MAR 2013	4.00	
ATF OFFICER'S SUBTOTAL	14.00	ATF OFFICER'S SIGNATURE
TOTAL HOURS	235.00	

13. REVIEW AND ROUTING

REVIEW COMMENTS AND RECOMMENDATION

S&W had one repeat violation of 27 CFR 478.122(a), which meets the level of a Warning Conference due to the repeat violation, and the fact that S&W exceeded the threshold of ^{(b)(3)- Public Law 112-55 (125 Stat)} or more of their total acquisitions being entered untimely into their A&D record.

S&W stated that they were unaware of the August 27, 2010 Open Letter to FFL Importers that addressed correct dates of entry for imported firearms. They stated they felt that they were entering the firearms correctly, basing the entries on arrival at their plant and gauging entries into the A&D within 15 days on the plant arrival date. S&W acknowledged their failure to stay on top of the importer information, Aug. 2010 open letter. They stated they know understand and will immediately begin adhering to the guidelines of the open letter.

Based on the findings IO (b)(6) recommends a Warning Letter in lieu of Warning Conference.

Viols WL ONLY and No Recall Inspection

☒ REVIEWED ☒ CONCUR ☒ SEE COMMENTS ☐ FINAL DISPOSITION

SIGNATURE AND TITLE (b)(6) - Industry Operations Investigator	REVIEW DATE 10/30/2013
--	---------------------------

REVIEW COMMENTS AND RECOMMENDATION

I am in agreement with the alternate recommendation.

Viols WL ONLY and No Recall Inspection

☒ REVIEWED ☒ CONCUR ☒ SEE COMMENTS ☒ FINAL DISPOSITION

SIGNATURE AND TITLE (b)(6) Director, Industry Operations	REVIEW DATE 10/30/2013
---	---------------------------

Assignment and Report

1. OPERATING NAME AND ADDRESS (INCLUDE ZIP CODE AND COUNTY) SMITH & WESSON CORP. 2100 Roosevelt Ave. Springfield, MA 01104, Hampden	2. U.I. NUMBER (ORG, SEG. CODE, ASSIGNMENT NO., P.P.C.) 762055-2013-0057-B1B		
	3. PERMIT/LICENSE NUMBER 604013084B01685	4a. TARGET DATE 8/30/2013	4b. TARGET HOURS 100
	5. REQUESTED BY (SIGNATURE, TITLE AND DATE)		

ROUTING SEQUENCE AND DATE

- ☐ 1. _____
☐ 2. _____
☐ 3. _____
☐ 4. _____

CONTROL FILE POSTED DATE _____

FIREARMS INSPECTION REPORT

Name: Smith & Wesson Corp. UI#: 762055-2013-0057 B1B
Trade Name: FFL#: 6-04-013-08-4B-01685
Address: 2100 Roosevelt Avenue
Springfield, MA 01104

1 - Introduction

Inspection Profile:

On February 12, 2013 Industry Operations Investigator (IOI) (b)(6) along with Hartford, CT IOIs (b)(6) initiated an on-site importer's compliance inspection at the business premises of Smith & Wesson Corp. (S&W), 2100 Roosevelt Avenue, Springfield, MA.

The ATF/IOI team held an opening conference on February 12, 2013 with the following S&W personnel (b)(6) – Vice President Mfg. & Supply, Robert Cicero – General Counsel Vice President, (b)(6) – Chief Counsel Consultant, and (b)(6) – Plant General Manager, and Christopher Scott – Associate General Counsel.

The inspection period covered February 1, 2012 to February 12, 2013. The scope of the inspection was a full importer's compliance inspection of S&W's importing activity.

Due to S&W being a major importer/manufacture of firearms, IOI (b)(6) provided advance notice to the FFL on February 4, 2013, as per ATF policy.

FIREARMS INSPECTION REPORT

Name: Smith & Wesson Corp.

UI#: 762055-2013-0057 B1B

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Pre-inspection activities included IOI (b)(6) contacting ATF Springfield, MA Resident Agent in Charge (RAC) (b)(6) to confirm that there were no open investigations. On January 27, 2013, via e-mail, RAC (b)(6) provided IOI (b)(6) confirmation that Industry Operations could proceed with the inspection. IOI (b)(6) also contacted the National Firearms Act Branch (NFA), the Violent Crime Analysis Branch (VCAB), and ATF's Imports Branch.

Business Profile:

S&W is one of the largest manufacturers of firearms in the United States. The company is a Massachusetts based corporation. The company's corporate headquarters is located at their primary production facility, 2100 Roosevelt Ave., Springfield, MA 01104. They also have a production facility in Houlton, ME, operating under Federal Firearms License (FFL) 6-01-003-07-4B-00748.

In addition to the company's manufacturing activity, the company (b)(4) (b)(4)

During the inspection period S&W imported approximately (b)(3)- Public Law 112-55 (125 Stat. 552) firearms. Of the approximate (b)(3)- Public Law 112-55 (125 Stat. 552) firearms imported all were handguns, except for (b)(3)- Public Law 112-55 (125 Stat. 552) long guns. Approximately (b)(3)- Public Law 112-55 (125 Stat. 552) imported firearms were sold during the inspection period. The sales of these firearms are wholesale in nature; S&W does not operate a retail firearms shop. The company primarily sells firearms through S&W authorized wholesalers and distributors throughout the U.S.

Of the approximately (b)(3)- Public Law 112-55 (125 Stat. 552) firearms imported during the inspection period, nearly all were new firearms. Only (b)(3)- Public Law 112-55 (125 Stat. 552) used handguns, returned by Australian law enforcement, were imported by S&W into the U.S., less than (b)(3)- Public Law 112-55 (125 Stat. 552) of the

FIREARMS INSPECTION REPORT

Name: Smith & Wesson Corp.

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yearly total.

S&W as a company does not attend or make sales at local gun shows; this activity is generally conducted by their authorized distributors. The company does attend trade shows primarily the annual "Shot Show" to showcase current and new model lines.

S&W maintains three licenses at the Springfield, MA facility, manufacturer's FFL 6-04-013-07-4B-01684, importer's FFL 6-04-013-08-4B-01685, and manufacturer's FFL 6-04-013-07-4E-05022, the latter under the trade name Thompson Center Arms.

In addition to the S&W's manufacturing and importing licenses, they also hold a current NFA Manufacturer Tax Stamp, valid from July 1, 2012 through June 30, 2013. All of the licenses held at the Springfield facility, along with the tax stamp operate under S&W's EIN – (b)(3) - (26 USC 6103)

S&W has been at the current Springfield, MA address for several decades, there have been no zoning issues in the past, none disclosed during the current inspection.

Although firearms, in various stages of the manufacturing process, maybe temporarily housed at sub-contractor sites, all completed firearms are stored at either the Springfield, MA or Houlton, ME facilities.

Ownership and Control:

FIREARMS INSPECTION REPORT

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S&W is a publicly owned company, with its primary production facility and headquarters located in the Commonwealth of Massachusetts. The current executive team has been in place since approximately 2009 - 2010.

There are no indications of hidden ownership. A current list of corporate officers was provided during the inspection, see ex. 2. There is one officer, (b) (6) (b) (6) Vice President U.S. Sales, that does not appear on ATF FLS. The matter was cleared up during the inspection, see ex 3. A NCIC query conducted by IOI (b) (6)

A query of the Commonwealth of Massachusetts Corporation search engine, see ex. 4a-c, revealed the same officers listing that was provided by S&W.

Variance:

(b)(3)- Public Law 112-55 (125 Stat. 552)

2 - Recommendation

FIREARMS INSPECTION REPORT

Name: Smith & Wesson Corp.

UI#: 762055-2013-0057 B1B

Trade Name:

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Violations Warning Letter Only and No Recall

S&W had one repeat violation of 27 CFR 478.122(a), which meets the level of a Warning Conference due to the repeat violation, and the fact that S&W exceeded the threshold ^{(b)(3)- Public Law 112-55 (125 Stat. 552)} or more of their total acquisitions being entered untimely into their A&D record.

S&W stated that they were unaware of the August 27, 2010 Open Letter to FFL Importers that addressed correct dates of entry for imported firearms. They stated they felt that they were entering the firearms correctly, basing the entries on arrival at their plant and gauging entries into the A&D within 15 days on the plant arrival date. S&W acknowledged their failure to stay on top of the importer information, Aug. 2010 open letter. They stated they know understand and will immediately begin adhering to the guidelines of the open letter.

Based on the findings IOI ^{(b)(6)} recommends a Warning Letter in lieu of Warning Conference.

3 - Inspection History

Under the current Importer's FFL, S&W has undergone one previous inspection UI# 762055-2007-0118, which was conducted in conjunction with the Type 07 FFL. The findings of the joint Type 07 & 08 inspection resulted in the following: Thirteen violations cited: 27 CFR 478.22, 27 CFR 478.39a, 27 CFR 478.99(a), 27 CFR 478.102, 27 CFR 478.124(a), 27 CFR 478.126a, 27 CFR 478.122(a), 27 CFR 478.123(a), 27 CFR 478.123(b), 27 CFR 478.123(d), 26 U.S.C. 5861(d), 26 U.S.C. 5861(e), and 26 U.S.C. 5841(e). Recommendation of Revocation, final action resulted in the 2009

FIREARMS INSPECTION REPORT

Name: Smith & Wesson Corp.

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"Cooperative Settlement Agreement" in lieu of revocation.

There have been other inspections conducted at S&W over the past twelve years, but these inspections were not conducted under the current FFL numbers or current corporate ownership.

4 - Internal Controls Evaluation

S&W's internal controls were found to be weak in the area of correctly and timely filing ATF Forms 6 Part I and ATF Forms 6A. S&W was cited for failing to properly execute the forms, failure to correctly list firearms that were acquired, failure to notify ATF of firearms that were not received, yet signed for as received and for failing to timely file the forms.

In addition to the errors found regarding S&W's handling of the required ATF importation paperwork, the company was cited for entering the wrong acquisition dates for imported firearms. S&W personnel stated they thought the date the firearms were received onsite, at their facility, was the correct acquisition date. IOI (b)(6) informed S&W that the correct date of acquisition is the date firearms are released from U.S. Customs and Border Protection (CBP). A copy of the August 27, 2010 Open Letter to ALL FFL Importers was provided to S&W, which provides clarification on the correct "date of importation" required to be recorded in a licensee's record of acquisition, see ex. 8a-b.

IOI (b)(6) discussed the vital role that S&W plays in ATF's firearms tracing program. The need for timely and accurate information is crucial to this function. S&W stated they

FIREARMS INSPECTION REPORT

Name: Smith & Wesson Corp.

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understand the importance of the information, and will take immediate steps in making sure that information is timely and correctly enter into their required ATF records.

5 - Acquisition & Disposition (A&D) Record - Inventory

Based on approval from the Hartford Area Supervisor, Boston, DIO, and ATF HQ it was agreed upon that (b)(3)- Public Law 112-55 (125 Stat. 552) inventory would be conducted of S&W's on hand inventory. IOI's from the Hartford, CT Area Office conducted a partial inventory from February 12, 2013 through February 15, 2013.

At the time of inspection, S&W had approximately (b)(3)- Public Law 112-55 (125 Stat. 552) firearms in inventory, covering the all three licenses (S&W mfg., S&W importer, Thompson Center mfg.). Approximately (b)(3)- Public Law 112-55 (125 Stat. 552) of the on hand firearms were imported, see thumb drive for all GCA in house (will remain in Hartford A/O file). IOIs conducted a physical inventory of (b)(3)- Public Law 112-55 (125 Stat. 552) of the firearms, approximately (b)(3)- Public Law 112-55 (125 Stat. 552) of the total inventory. IOI's conducted checks throughout the plant covering S&W manufactured firearms under the S&W and Thompson Center brand names along with imported firearms on hand from foreign supplier (b) (4). IOIs utilized print-out from the Excel spreadsheet provided by S&W Associate General Counsel – Chris Scott. The thumb drive provided will be on hand in the Hartford A/O.

IOIs conducted checks from book to firearm, approx (b)(3)- Public Law 112-55 (125 Stat. 552) and firearm to book, approx (b)(3)- Public Law 112-55 (125 Stat. 552) the (b)(3)- Public Law 112-55 (125 Stat. 552) imported firearms are part of the overall inventory count. Firearms were also inspected for marking requirements. At the close of the inspection, there were no discrepancies disclosed concerning the firearms chosen for inventory and the reconciliation to the A&D record. No firearms marking discrepancies were

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disclosed during the inspection.

There were no theft/loss reports filed by S&W under the Type 08 FFL, during the past twelve months, or as a result of the current inspection.

S&W's importer's A&D records are in the proper format. There were errors disclosed as to accurate information and timely posted entries.

IOIs reviewed A&D acquisition dates against ATF Forms 6A (Release and Receipt of Imported Firearms, Ammunition and Implements of War), received from ATF Imports Branch, covering S&W importations, over (b)(3)- Public Law 112-55 (125 Stat. 552) firearms, from February 1, 2012 to February 12, 2013. All acquisitions were found to have dates that did not match the U.S. Customs release dates posted on the ATF F 6As.

A sample is provided to show the incorrect dates for a shipment of (b)(3)- Public Law 112-55 (125 Stat. 552) firearms released from U.S. Customs on March 8, 2012, but entered into S&W's A&D records on March 28, 2012. Other firearms in this shipment had A&D entry dates of March 26th and 27th, see ex. 9a-f. In addition to the incorrect acquisition dates being posted in the A&D records, S&W also failed to enter the acquisitions within 15 days of the importation for the (b)(3)- Public Law 112-55 (125 Stat. 552) firearms reflected on ex. 9a-c. S&W was cited under 27 CFR 478.122(a) for failing to enter correct acquisition dates and failing to enter the imports within the 15 day limit prescribed by regulation, see Report of Violation (ROV) #3, ex.'s 9a-f, and Worksheet 1 – Inventory, A&D.

IOI's also disclosed that S&W (b)(3)- Public Law 112-55 (125 Stat. 552) instances failed to list the FFL numbers of repair or replacement firearms returned to FFLs, see ex. 10a-b. S&W was cited under 27 CFR 478.122(b) for failing to enter FFL numbers in their A&D record, see ROV #4, ex. 10a-b,

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and Worksheet 1 – Inventory, A&D.

As previously stated (D19) Public Law (112-55) (125 Stat. 552) firearms from the March 8, 2012 importation, see ex. 9a-c, were traced through acquisition to disposition. Other than the previously mentioned violations for accurate and timely information the firearms did make it into S&W's records and were disposed of in the correct fashion.

There were no indications of trafficking disclosed by S&W during the inspection period. There were no obliterated serial numbers found during the inspection or reported during the inspection period by S&W, for returned/repair firearms.

6 - ATF Forms 4473 – NICS & Other Dispositions

There were no ATF Forms 4473 on hand during the inspection period. Following the 2007 inspection, S&W ceased selling firearms at retail from their Springfield, MA plant. In the event S&W employees wish to buy firearms produced at the Springfield, MA facility arrangements are made with local retail shops for FFL to FFL transfers.

There were no discrepancies with transfers to other licenses or transfers to law enforcement agencies.

There were no indications of firearms trafficking. There were no NICS audit log verifications due to the fact that there were no transactions to non-licensees.

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7 - Suspicious/Prohibited Purchasers

There were no suspicious or prohibited purchases disclosed during the inspection period. All employee, non-licensee, transactions are made through local area FFL's, there are no direct sales to non-licensees at the Springfield, MA facility.

There were no criminal history checks completed. There were no formal referrals made during the course of the field inspection.

8 - Trace Activity

(b)(3) 112 Public Law 55 125 STAT 552



9 - Multiple Sales

There are no retail firearms sales conducted from the Springfield, MA facility during the inspection period. IOI (b)(6) requested a query for S&W from ATF VCAB, there were

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Name: Smith & Wesson Corp.

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no multiple sales reported for the inspection period.

10 - NFA/Importer/Collector/Manufacturer

(b)(3) - (26 USC 6103)



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(b)(3) - (26 USC 6103)



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Name: Smith & Wesson Corp.

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Trade Name:

FFL#: 6-04-013-08-4B-01685

(b)(3) - (26 USC 6103)

11 - Referrals

No formal referrals conducted under the importer inspection.

12 - Other

S&W does not distribute firearms at the retail level but they are in possession of Youth Handgun Safety information. All of their firearms come with secure storage/safety devices.

The company is in the process of upgrading their records system to a SAP computer

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Trade Name:

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system. S&W stated they feel the system will allow them greater flexibility and control. The system will provide the necessary ATF required format and will allow them to maintain other formats necessary for their company's daily needs. They are hoping the system will be up and running in late fall of 2013.

13 - Closing Actions

On April 26, 2013, IOIs (b)(6) held a closing conference with (b)(6) – Vice President Mfg. & Supply, Robert Cicero – General Counsel Vice President (b)(6) (b)(6) – Chief Counsel Consultant, and (b)(6) – Plant General Manager, and Christopher Scott – Associate General Counsel.

The inspection findings were reviewed, and the company was presented with the ROVs for both the manufacturing and importing licenses. All violations were covered, Type 07 and 08, the company feels they now have a greater knowledge of what is expected of them in both areas. They feel the upgrade of the computer system will allow them to better handle the accurate tracking of the numerous amounts of frames, receivers and complete firearms that flow from sub-contractors, their sister company in New Hampshire and with their customers. Robert Cicero signed the ROV for S&W, a copy was provided to the company for their records.

IOI (b)(6) reviewed the ATF Acknowledgement of Federal Firearms Regulations, see ex. 1. A copy of the form was provided to S&W for their files.

S&W had one repeat violation of 27 CFR 478.122(a), which meets the level of a Warning Conference due to the repeat violation, and the fact that S&W exceeded the threshold of (b)(6) or more of their total acquisitions being entered untimely into their

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A&D record.

S&W stated that they were unaware of the August 27, 2010 Open Letter to FFL Importers that addressed correct dates of entry for imported firearms. They stated they felt that they were entering the firearms correctly, basing the entries on arrival at their plant and gauging entries into the A&D within 15 days on the plant arrival date. S&W acknowledged their failure to stay on top of the importer information, Aug. 2010 open letter. They stated they now understand and will immediately begin adhering to the guidelines of the open letter.

Based on the findings IOI (b)(6) recommends a Warning Letter in lieu of Warning Conference, see attached Warning Letter.

14 - Violations

1. 27 CFR 478.112(b)(1)

Nature of violation:

Licensee failed to provide all of the information requested on ATF Form 6-Part 1. In (b)(3) 112 Public L instances, during the inspection period, the licensee failed to complete section four, name and address of customs broker.

(b)(3)- Public Law 112-55 (125 Stat. 552)

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(b)(3)- Public Law 112-55 (125 Stat. 552)

Licensee's response:

Licensee stated that these were oversights on their end, and they will make sure to pay closer attention during the filing and review of future importations.

Corrective action:

Licensee was instructed that all applicable items must be completed. Licensee confirmed they do utilize two customs brokers, and will immediately begin listing the information for these companies on future submissions of ATF Forms 6-Part 1.

Licensee will file an amended ATF Form 6A listing the firearms.

See ex.'s 11 – 17a-b.

2. 27 CFR 478.112(d)(1)

Nature of violation:

Licensee failed to forward ATF Forms 6A within 15 days to ATF. The inspection revealed instances where Forms 6A were submitted outside the allotted 15 day time frame.

Permit Numbers associated with the untimely filings: 11-04768, 11-05514, 11-06802, 12-00403, 12-00411, 12-01315, 12-03381, 12-03557,

12-04686, 12-04729, 12-06435, 12-08572.

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Trade Name:

FFL#: 6-04-013-08-4B-01685

Licensee failed to report a discrepancy found on ATF Form 6A. One Form 6A dated 10/31/12, associated with Permit number 12-04729, listed the shipment contained the firearms in exact quantity and as described in item 9 of the form. (b)(3)- Public Law 112-55 (125 Stat. 552)

(b)(3)- Public Law 112-55 (125 Stat. 552)

Licensee's response:

Licensee stated that these were oversights on their end, and they will make sure to pay closer attention during the filing and review of future importations.

Corrective action:

Licensee will immediately begin submitting Forms 6A within the allotted 15 day time frame.

Licensee will file an amended ATF Form 6A listing the discrepancy.

See ex.'s 18a-i, and 19a-b.

3. 27 CFR 478.122(a)

REPEAT VIOLATION FROM 2007 INSPECTION:

Nature of violation:

Licensee failed to enter the correct acquisition dates in their A&D record for all firearms imported during the inspection period. (b)(3) 112 Public Law 55 125 STAT 552 firearms.

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Acquisition entry dates were found to be posted on various dates after the firearms physical arrival at S&W's facility.

Licensee failed to enter, within 15 days, required information in their A&D record for (b)(3)- Public Law 112-55 (125 Stat. 552) firearms. ATF Form 6A dated 3/30/2012, associated with Permit number 11-05514, listed (b)(3)- Public Law 112-55 (125 Stat. 552) firearms imported under the permit. The CBP release date shows 3/8/2012, the firearms were entered into the Licensee's A&D record between 3/26-28/2012, which exceeds the 15 day requirement.

Licensee's response:

Licensee stated that these were oversights on their end, and they will make sure to pay closer attention during the filing and review of future importations.

Corrective action:

Licensee was informed by ATF IOIs that the correct A&D acquisition dates should reflect the release date from U.S. Customs and Border Protection.

Licensee will pay closer attention on future importations to ensure firearms are entered in to their A&D records within the required 15 day time frame.

See ex.'s 9a-f, and Worksheet 1 – Inventory, A&D.

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Name: Smith & Wesson Corp.

UI#: 762055-2013-0057 B1B

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4. **27 CFR 478.122(b)**

Nature of violation:

Licensee failed, (b)(3)- Public Law 112-55 (125 Stat. 2529) instances, to enter the FFL number in their A&D record for imported firearms disposed of during the inspection period.

Licensee's response:

Licensee stated that since the firearms involved were repair or replacement firearms being returned to FFL's they felt they did not need to enter the FFL number.

Corrective action:

Licensee was instructed to list in their A&D record complete FFL numbers, for all firearms, disposed of to Federal Firearms Licensees.

ex. 10a-b, and Worksheet 1 – Inventory, A&D.

FIREARMS INSPECTION REPORT

Name: Smith & Wesson Corp.

UI#: 762055-2013-0057 B1B

Trade Name:

FFL#: 6-04-013-08-4B-01685

	Investigator	9/27/13
Signature	Title	Date of Report

Index of Worksheets and Exhibits

Worksheet Workbook

Ex. 1a-b – Acknowledgement of Federal Firearms Regulations

Ex. 2 - S&W list of Officers and Directors

Ex. 3 – E-mail addressing addition of corporate officer (b) (6)

Ex. 4a-c – Commonwealth of Mass corporation listing

Ex. 5a-b – Marking variance letter AFT

Ex. 6a-d – Marking variance letter Tri Town

Ex. 7a-c – Variance letter allowing S&W and TCA to consolidate records

Ex. 8a-b – Open Letter re: Importer A&D records

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Ex. 9a-f – Form 6a and A&D records

Ex. 10a-b – A&D listing no FFL number in disposition section

Ex. 11-13 – ATF F 6 Part-1s, no broker information.

Ex. 14a-g – ATF F 6 Part-1, listing firearms requested for importation

Ex. 15a-g – ATF F 6A, showing S&W receipt of firearms

Ex. 16 - Sample listing of A&D entries that differ from import documents (type)

Ex. 17a-b – Listing of A&D entries that differ from import documents (type & cal.)

Ex. 18a-i – ATF F 6As reflecting entry and filing dates

Ex. 19a-b – ATF F 6A reflecting firearm received

Ex. 20a-k – VCAB listings for 12 month period (2/1/12 to 2/12/13)

Ex. 21a-b – S&W and (b) (4)

Attachments:

ROV

Warning Letter

Report of Violations

Instructions

Please write firmly with a ball point pen when completing this form. ATF officers will prepare this form in triplicate. The original copy will be given to the proprietor or a responsible representative. The remaining copies will be submitted with the completed inspection report. Supervisors will detach one copy from the completed report for their files.

Name of Proprietor	Street Address	City	State	ZIP Code	County	Page <u>1</u> of <u>2</u> Pages
Smith & Wesson Corp.	2100 Roosevelt Avenue	Springfield	MA	01104	Hampden	
License/Permit/Registry Number (if any)	Expiration Date	Date(s) or Period of Inspection				
6-04-013-08-4B-01685	February 1, 2014	February 1, 2012 to February 12, 2013				

Inspection Results

An examination of your premises, records and operations has disclosed the following violations which have been explained to you:

Number	USC or CFR Citation	Nature of Violation	Corrective Action to be Taken (If not corrected immediately)	Date Corrections to be Made (If not corrected immediately)
1	27 CFR 478.112(b)(1)	<p>Licensee failed to provide all of the information requested on ATF Form 6-Part 1. In ^{(b)(3)- Public Law 112-55 (125 Stat. 552)} instances, during the inspection period, the licensee failed to complete section four, name and address of customs broker.</p> <p>Licensee failed to file ATF Form 6-Part 1 for the importation ^{(b)(3)- Public Law 112-55 (125 Stat. 552)} of firearms. Licensee requested, under permit number 12-01315, approval for ^{(b)(3)- Public Law 112-55 (125 Stat. 552)} of the firearms listed on ATF Forms 6 and 6A, the latter released by U. S. Customs on April 13, 2012, did not match the correct caliber or model as listed on the forms ^{(b)(3)- Public Law 112-55 (125 Stat. 552)}. Firearms were listed in the A&D record as ^{(b)(3)- Public Law 112-55 (125 Stat. 552)} (b)(3)- Public Law 112-55 (125 Stat. 552)</p>	<p>Licensee was instructed that all applicable items must be completed. Licensee confirmed they do utilize two customs brokers, and will immediately begin listing the information for these companies on future submissions of ATF Forms 6-Part 1.</p> <p>Licensee will file an amended ATF Form 6A listing ^{(b)(3)- Public Law 112-55 (125 Stat. 552)} firearms.</p>	Immediate correction.
2	27 CFR 478.112(d)(1)	<p>Licensee failed to forward ATF Forms 6A within 15 days to ATF. The inspection revealed ^{(b)(3)- Public Law 112-55 (125 Stat. 552)} instances where Forms 6A were submitted outside the allotted 15 day time frame.</p> <p>Permit Numbers associated with the untimely filings: 11-04768, 11-05514, 11-06802, 12-00403, 12-00411, 12-01315, 12-03381, 12-03557, 12-04686, 12-04729, 12-06435, 12-08572.</p>	Licensee will immediately begin submitting Forms 6A within the allotted 15 day time frame.	Immediate correction.

I Have Received a Copy of This Report of Violations (Proprietor's signature and title)

Date

Signature and Title of ATF Officer

Date

Report of Violations

Instructions

Please write firmly with a ball point pen when completing this form. ATF officers will prepare this form in triplicate. The original copy will be given to the proprietor or a responsible representative. The remaining copies will be submitted with the completed inspection report. Supervisors will detach one copy from the completed report for their files.

Name of Proprietor Smith & Wesson Corp.	Street Address 2100 Roosevelt Avenue	City Springfield	State MA	ZIP Code 01104	County Hampden	Page 2 of 2 Pages
License/Permit/Registry Number (if any) 6-04-013-08-4B-01685		Expiration Date February 1, 2014	Date(s) or Period of Inspection February 1, 2012 to February 12, 2013			

Inspection Results

An examination of your premises, records and operations has disclosed the following violations which have been explained to you:

Number	USC or CFR Citation	Nature of Violation	Corrective Action to be Taken (If not corrected immediately)	Date Corrections to be Made (If not corrected immediately)
2 cont.	27 CFR 478.112(d)(1)	Licensee failed to report a discrepancy found on ATF Form 6A. (b)(3)- Public Law 112-55 (125 Stat. 552) Form 6A dated 10/31/12, associated with Permit number 12-04729, listed the shipment contained the firearms in exact quantity and as described in item 9 of the form. (b)(3)- Public Law 112-55 (125 Stat. 552) is listed on the form but was never posted in the licensee's A&D record. Licensee stated the firearm was never received from foreign seller.	Licensee will file an amended ATF Form 6A listing the discrepancy.	Immediate correction.
3	27 CFR 478.122(a)	REPEAT VIOLATION from 2007 inspection: Licensee failed to enter the correct acquisition dates in their A&D record for all firearms imported during the inspection period. (b)(3)- Public Law 112-55 (125 Stat. 552) firearms. Acquisition entry dates were found to be posted on various dates after the firearms physical arrival at S&W's facility. Licensee failed to enter, within 15 days, required information in their A&D record for (b)(3)- Public Law 112-55 (125 Stat. 552) firearms. ATF Form 6A dated 3/30/2012, associated with Permit number 11-05514, listed (b)(3)- Public Law 112-55 (125 Stat. 552) firearms imported under the permit. The CBP release date shows 3/8/2012, the firearms were entered into the Licensee's A&D record between 3/26-28/2012, which exceeds the 15 day requirement.	Licensee was informed by ATF IOIs that the correct A&D acquisition dates should reflect the release date from U.S. Customs and Border Protection. Licensee will pay closer attention on future importations to ensure firearms are entered in to their A&D records within the required 15 day time frame.	Immediate correction.
4	27 CFR 478.122(b)	Licensee failed, (b)(3)- Public Law 112-55 (125 Stat. 552) instances, to enter the FFL number in their A&D record for imported firearms disposed of during the inspection period.	Licensee was instructed to list in their A&D record complete FFL numbers, for all firearms, disposed of to Federal Firearms Licensees.	Immediate correction.

Report of Violations

Instructions

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Name of Proprietor	Street Address	City	State	ZIP Code	County	Page _____ of _____ Pages
License/Permit/Registry Number (if any)		Expiration Date	Date(s) or Period of Inspection			

Inspection Results

An examination of your premises, records and operations has disclosed the following violations which have been explained to you:

Number	USC or CFR Citation	Nature of Violation	Corrective Action to be Taken (If not corrected immediately)	Date Corrections to be Made (If not corrected immediately)

Please write firmly with a ball point pen when completing this form. ATF officers will prepare this form in triplicate. The original copy will be given to the proprietor or a responsible representative. The remaining copies will be submitted with the completed inspection report. Supervisors will detach one copy from the completed report for their files.

Inspection Results

Number	USC or CFR Citation	Nature of Violation	Corrective Action to be Taken (If not corrected immediately)	Date Corrections to be Made (If not corrected immediately)

Please write firmly with a ball point pen when completing this form. ATF officers will prepare this form in triplicate. The original copy will be given to the proprietor or a responsible representative. The remaining copies will be submitted with the completed inspection report. Supervisors will detach one copy from the completed report for their files.

Inspection Results

An examination of your premises, records and operations has disclosed the following violations which have been explained to you:

ATF E-Form 5030.5
Revised April 2005

Report of Violations

Instructions

Please write firmly with a ball point pen when completing this form. ATF officers will prepare this form in triplicate. The original copy will be given to the proprietor or a responsible representative. The remaining copies will be submitted with the completed inspection report. Supervisors will detach one copy from the completed report for their files.

Name of Proprietor	Street Address	City	State	ZIP Code	County	Page _____ of _____ Pages
License/Permit/Registry Number (if any)		Expiration Date	Date(s) or Period of Inspection			

Inspection Results

An examination of your premises, records and operations has disclosed the following violations which have been explained to you:

Number	USC or CFR Citation	Nature of Violation	Corrective Action to be Taken (If not corrected immediately)	Date Corrections to be Made (If not corrected immediately)

450 Main Street, Room 610
Hartford, CT 06103

November 5, 2013

CERTIFIED MAIL

RETURN RECEIPT

762055 (b)(6)
5300

WARNING LETTER

Smith & Wesson Corp.
2100 Roosevelt Avenue

Springfield, MA 01104

FFL# 6-04-013-08-4B-01685

Dear Mr. Cicero:

During a recent compliance inspection of your company's firearms business covering the period of February 1, 2012 through February 12, 2013, you were cited for violations of 27 Code of Federal Regulations, Part 478. A copy of the Report of Violations, Form 5030.5, issued at the time of the inspection is enclosed.

All violations were fully explained to you by the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) Investigator (b)(6). You indicated that you understood the requirements of the firearms laws and regulations. You further indicated that corrective actions would be taken to eliminate future violations.

The records you are required to maintain and the business operations you conduct are important to law enforcement in our continuing efforts to reduce violent crime and ensure the public's safety. It is essential that you comply with all Federal laws and regulations that govern your firearms business. ATF appreciates the efforts you and other industry members make in this area, and we look forward to continuing to work with you in that regard.

You are reminded that retention of your Federal Firearms License is conditioned upon your compliance with Federal laws and regulations. Any future violations, either repeat or otherwise, could be viewed as willful and may result in the revocation of your license. Please ensure that future compliance is achieved.

Should you have any questions regarding this matter, please contact Area Supervisor (b)(6)

[REDACTED]

Sincerely yours,

(b)(6)

Area Supervisor

Enclosure

cc: National Licensing Center

Hartford I/O Office