Statement of

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before the

House Committee on Government Reform
Subcommittee on National Security,
Emerging Threats and International Relations

concerning

"Homeland Security: Surveillance and
Monitoring of Explosive Storage Facilities, Part II"

October 31, 2005

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Mr. Chairman, Congressman Lantos, and Members of the Subcommittee on National Security, Emerging Threats and International Relations:

I. INTRODUCTION

On behalf of the Department of Justice Office of the Inspector General (OIG), I appreciate the opportunity to again testify before the Subcommittee as it examines issues related to safeguarding stored explosives. You requested that our testimony describe the findings of the OIG's March 2005 report on the Bureau of Alcohol, Tobacco, Firearms and Explosives' (ATF) implementation of the Safe Explosives Act (SEA).[1] My testimony today is based on that report. I will discuss several of the issues raised in that report, the recommendations we made, and the actions the ATF has taken to improve its inspections of explosives licensees. I will also briefly discuss the ATF's inspector staffing levels.

II. ATF'S IMPLEMENTATION OF THE SAFE EXPLOSIVES ACT

In March 2005, the OIG issued our report on the ATF's implementation of the SEA. The report, titled Review of the Bureau of

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[1] P.L. 107-296, Title XI, Subtitle C of the Homeland Security Act of 2002.

Alcohol, Tobacco, Firearms and Explosives' Implementation of the Safe Explosives Act, focused on whether the ATF had effectively implemented a licensing procedure and an inspections process to ensure that explosives are properly stored and protected, and that only reliable individuals are allowed access to explosives. We also reviewed the ATF's plans to establish the National Explosives Licensing Center and the ATF National Laboratory's plans to collect and catalog samples of explosives as authorized by the SEA.

The SEA, enacted on November 25, 2002, expanded the ATF's authority to license the intrastate manufacture, purchase, and use of explosives. The SEA also expanded the categories of "prohibited persons" that should be denied access to explosives.[2] To protect public safety, the ATF is required to conduct background checks on the owners and officers of companies that make or sell explosives (licensees), as well as on those companies' employees who have access to explosives as part of their work (Employee Possessors). The ATF entered into an agreement with the Federal Bureau of Investigation (FBI) to perform those background checks using the FBI's National Instant Criminal Background Check System (NICS). The SEA also required the ATF to inspect licensees' manufacturing and storage facilities at least once every 3 years, beginning with all new license applications and renewal applications submitted after May 23, 2003.

Our review found deficiencies with several aspects of the ATF's implementation of the SEA. The most critical finding was that the ATF's background check and clearance process was not ensuring that prohibited persons were denied access to explosives. We found that the procedures that the ATF implemented were not effective for several reasons, which I summarize below.

Background Check and Clearance Process Deficiencies

Some applicants' background not checked. First, the ATF did not request FBI background checks on all employees of license applicants. We compared the records of 683 individuals contained in the ATF's Federal Licensing System with records in the FBI's NICS and found that 59 of the individuals in our sample (9 percent) were not listed in the

[2] "Prohibited persons" include felons, fugitives, individuals who use or are addicted to controlled substances, individuals who have been adjudicated mentally defective or committed to mental institutions, aliens (with limited exceptions), individuals dishonorably discharged from the military, and individuals who have renounced their United States citizenship.

FBI's records as having had a background check.[3] Of those 59, the ATF's records indicated that 25 had been cleared to access explosives, and no decision had been made for the other 34. Until the ATF completes its determination, the cases are categorized as "pending" and the individuals continue to have access to explosives.

Cases with completed background checks not adjudicated. In cases in which the FBI had completed its background checks, the ATF frequently failed to make a final clearance determination, or adjudication. The ATF had not made a final determination for 31 percent of the individuals in our sample.[4] Those applications had been held in pending status for an average of 299 days.

Inaction on many identified or suspected prohibited persons. The ATF also failed to act when individuals were identified as prohibited persons by the FBI or when the FBI could not confirm potentially prohibiting factors found during the NICS check. As of August 2004, the FBI had identified 1,157 Employee Possessor applicants who appeared to be prohibited persons. However, ATF data showed only 502 of those individuals had been denied – the other 655 individuals remained in a "pending" status and continued to have the authority to access explosives. Our research found that some of these individuals had significant criminal records. For example, one individual had been arrested over 20 times and had at least 3 felony convictions (2 for damaging property and one for auto theft) since 1992. The individual was back in prison for felony theft at the time we checked his record, but he was still authorized to access explosives.

We identified an additional 297 cases in which the FBI NICS check indicated possible prohibiting factors that the FBI could not confirm for various reasons, such as because court records were not available. The FBI had referred the cases back to the ATF to complete the investigations. Under the ATF's procedures, the cases were to be reviewed and, if necessary, assigned to a Field Division for investigation. We found that as of January 2005, the 297 cases had been with the ATF Headquarters for an average of 363 days, but none had been referred to an ATF field office for investigation. Again, the applicants remained in pending status, with the authority to access explosives.

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[3] We reviewed a sample of 1,000 records. Individual Employee Possessors can have more than one record because they may be included on separate applications for different license types. The 1,000 records we reviewed encompassed 683 individual Employee Possessors.

[4] For employees with more than one record, we considered the determination to be complete if a final result was entered into any of the records.

Overall, because of the systemic failures to complete background checks, adjudicate the results, and promptly deny identified prohibited persons, we concluded that the ATF's clearance process was not effective in preventing prohibited persons from accessing explosives.

Inconsistent Regulatory Enforcement and Inspections

We also found problems with the ATF's inspection of licensees that are pertinent to today's hearing. We stated in our report that because of inadequate training, the ATF's inspector workforce lacked explosives product knowledge. As a result, inspectors were not consistent in their enforcement of explosives regulations. After the SEA was enacted, the ATF expanded its Advanced Explosives Training Course for inspectors from 7 to 10 days and enhanced the training to include more explosives product identification. The ATF told us that it intended to have all inspectors attend the enhanced training, although it planned to conduct only 3 classes per year, with 30 inspectors in each class. At that rate, we estimated it would take 7 years for the ATF to send all inspectors it had on board to the revised course.

During our field work, ATF officials, inspectors, and industry members also cited problems with the consistency of inspectors' interpretations of ATF regulations relating to explosives storage facilities, which they attributed to the lack of inspector training. For example, one licensee who operates nationwide told us that because ATF inspectors conduct inspections and interpret regulations differently at various locations across the country, he could not develop a consistent corporate policy to comply with ATF regulations. According to ATF inspectors we interviewed, calculating the quantities of explosives allowed in storage magazines was the issue that most frequently caused them difficulty when conducting explosives inspections.

We also found that the ATF's compliance inspection procedures were inadequate to identify Employee Possessors who became prohibited persons after their initial background check. The ATF's procedures instructed inspectors to conduct "random" background checks on Employee Possessors during compliance inspections, but did not specify how many checks to conduct or establish how the random sample was to be selected. At the time of our review, the ATF had not determined whether to conduct NICS background checks on all Employee Possessors when explosives licenses or permits are renewed or whether to require Employee Possessors to submit updated information when their employers renew their licenses. We were concerned because some Employee Possessors with prohibiting factors would continue to have access to explosives for years before being rechecked during a compliance or renewal inspection.

OIG Recommendations and ATF's Response

Our report included several recommendations for correcting the deficiencies we found in the ATF's background clearance process and for improving the consistency of regulatory determinations by ATF inspectors. Regarding the ATF's background clearance process, we recommended that the ATF:

- Implement procedures to ensure that all Employee Possessor applicants receive a thorough background check.

- Establish milestones and controls to ensure that Employee Possessor applicants do not remain in a "pending" status for extended periods, including generating an aging report for pending cases and setting priorities for resolving cases that have been pending for more than 45 days.

- Conduct a 100-percent cross-match of individuals issued licenses and permits by the ATF with the individuals on whom the FBI conducted NICS checks. Based on that check, conduct background checks on any individuals not confirmed as having been checked by the FBI, and recheck the license status of all individuals determined by the FBI to be prohibited persons to ensure those individuals are denied access to explosives.

To improve the consistency of regulatory determinations, we recommended that the ATF:

- Designate a single point of contact at ATF Headquarters for inspectors and explosives industry members that would maintain a history of regulatory inquiries and post frequently requested information on the ATF's web site.

- Examine alternatives for speeding the delivery of the ATF's Advanced Explosives Training course to all inspectors, and develop a curriculum to build explosives expertise within the ATF's inspector workforce.

ATF's corrective actions. In responses and status reports the ATF provided from March 2005 to as recently as a week ago, the ATF has given the OIG information and data indicating that it is taking various actions to correct the deficiencies we found. For example, the ATF has provided documentation on new data entry procedures and quality controls it has implemented to ensure that applicant data is entered accurately and that NICS checks are requested on all applicants. The

ATF is also in the process of conducting a 100-percent cross-match of data in its licensing database with FBI NICS data to identify all Employee Possessors whose backgrounds were not previously checked by the FBI. The ATF has informed us that once the cross-match is complete, it will submit the names of any unchecked Employee Possessors to NICS.

The ATF has stated that its efforts to reconcile its data with that of the FBI has already yielded results. The ATF informed us that it had identified 433 records that had an FBI-NICS status of "Deny," but were listed in ATF's records as "Pending" or "Cleared." The ATF stated that it has made the necessary corrections to these inaccurate records in its database. In addition, the ATF informed the OIG that it had identified all records where the FBI-NICS check resulted in a "Proceed," but the corresponding ATF record had a status of "Pending" or "Denied." The ATF reported that the 25,456 records it identified in which the background check results in the ATF's records did not match the FBI's records have been corrected. Based on these reviews of discrepancies between statuses in FBI-NICS records and ATF's records, the ATF generated 1,351 Notices of Clearance to inform employers of the results of their employees' background checks, and mailed 25,456 Letters of Clearance, which notify employees of their clearance status. As of October 24, 2005, the ATF was continuing to examine records to identify and resolve discrepancies between its system and the FBI's NICS records.

The ATF also agreed to implement an aging report to identify cases that remain in pending status for more than 45 days. The ATF informed us on October 24, 2005, that the software to generate the report had been developed and was undergoing testing. According to the ATF, the target implementation date was the end of October, 2005.

The ATF also reported that it has taken action on all of the pending cases involving Employee Possessors identified as prohibited persons by the FBI and that it has made procedural changes to ensure that all individuals the FBI identified as prohibited persons are promptly denied access to explosives. Regarding the cases of individuals for whom the FBI could not complete a background check, 115 were found to still be employed by an explosives licensee. The ATF informed us that it had contacted each of those individuals to obtain the clarifying information it needed to make a clearance determination. The ATF stated that the cases of any individuals who did not respond to the information requests within 45 days were being referred to ATF Field Divisions for further investigation. According to data provided by the ATF on October 24, 2005, 89 of the cases had been resolved, with most applicants being cleared. The 26 cases that remained open had been referred to the appropriate Field Division.

Regarding our recommendations to improve the consistency of regulatory determinations, the ATF stated that the Explosives Industry Programs Branch has served, and will to continue to serve, as the single point of contact for information on explosives regulations at ATF Headquarters. The ATF provided the OIG with examples of questions it has received from explosives industry members, the ATF's responses to these inquiries, and a description of how the Explosives Industry Programs Branch handles these communications to ensure that ATF inspectors are made aware of regulatory determinations. Copies of correspondence with national implications, such as regulatory determinations, are sent to field personnel, although the ATF stated that it is exploring more efficient means of disseminating this information since the current process involves making and mailing paper copies. A method of sending electronic copies is being devised, according to the ATF.

The ATF also agreed to post frequently requested information on its web site and to explore ways to post information that is relevant to explosives industry members and ATF inspectors. The ATF stated that it has posted all of its published newsletters and several rulings regarding explosives regulations on the web site and, when available, plans to post an update of *Federal Explosives Law and Regulations*, a widely used ATF publication. In addition, the ATF stated that it is placing significant documents on a newly designed intranet site where all ATF personnel will have immediate access to those documents. The documents will be limited to those of national importance, such as regulatory determinations, clarifications of policy and regulations, and some limited variance requests. We are continuing to monitor the ATF's efforts to make its Internet and intranet web sites more useful for providing information to industry members and its staff.

In response to our recommendation that it speed up the delivery of the Advanced Explosives Training course and develop a curriculum to build explosives expertise within the ATF's inspector workforce, the ATF has provided the dates and attendance rosters for three courses: Advanced Explosives Training for inspectors; Chemistry of Pyrotechnics for Area Supervisors; and the Mining, Blasting, Safety, and Application Seminar. The ATF also provided agendas and lists of scheduled attendees for two future iterations of these courses.

In addition, the ATF provided a copy of a June 2005 training DVD developed in conjunction with the American Pyrotechnics Association entitled "ATF/APA Fireworks Safety Training" specifically for use at quarterly roll call training. We reviewed the DVD and found it to be comprehensive and well produced. The DVD can be viewed by new staff so that they can gain a fundamental understanding of this type of

inspection. The ATF informed the OIG that they are in the process of conducting an agency-wide training needs survey and will use the results of the survey to set priorities for topic areas to be covered by future training DVDs. The ATF did not provide a schedule for the survey or for the production of the next DVD.

Finally, the ATF provided the OIG with a copy of the interactive CD, "ATF Reference Library." The CD, issued in September 2004, contains all ATF directives and guidelines; copies of all forms used by the ATF; a phone book for all ATF Bureau Offices, Field Divisions, and Field Operations personnel, as well as other frequently used numbers; and a comprehensive Explosives Multimedia Database, which includes technical descriptions and photos of most explosives products that inspectors will encounter.

Overall, we believe the actions that the ATF has reported to us to date are responsive to the recommendations in our report on the implementation of the SEA. As a part of our post-review resolution process, however, we are continuing to work with the ATF to obtain the information on the corrective actions it has reported taking. Although we believe that the ATF is taking steps in the right direction, because we have not conducted an on-site follow-up review, we cannot definitively state that the deficiencies we identified have been corrected fully.

III. ATF INSPECTOR STAFFING LEVELS

During our August 2004 testimony, which focused on our review of the ATF's inspections of Federal Firearms Licensees, we noted that the ATF had projected that it needed about 1,775 inspectors to conduct its workload of firearms and explosives inspections. According to the ATF, it needed 1,235 inspectors to inspect firearms licensees, and about 540 inspectors to inspect explosives licensees. We questioned that number, which was included in a staffing report provided to Congress, because we found the methodology the ATF used to calculate that figure was based on unsupported assumptions. In particular, we questioned the ATF's assumptions regarding the time required to conduct inspections of firearms dealers. In our July 2004 report, *Inspections of Firearms Dealers by the Bureau of Alcohol, Tobacco, Firearms and Explosives*, we recommended that the ATF revise its staffing report to reflect more accurate assumptions. The Government Accountability Office report that Ms. Ekstrand discussed at today's hearing cited our analysis of the staffing requirement calculations.

On September 23, 2005, the ATF provided us with a revised calculation of its staffing requirements. The ATF's revised calculations indicated that it requires 1,014 inspectors to conduct compliance

inspections on Federal Firearms Licensees and Federal Explosives Licensees. The ATF stated that 855 of the inspectors would be dedicated to conducting compliance inspections of 66,651 Federal Firearms Licensees, the population of firearms retailers as of September 23, 2005, excluding those issued collector's licenses. The remaining 159 inspectors would be dedicated to conducting compliance inspections on Federal Explosives Licensees. As of October 25, 2005, the ATF reported to us that it employed 610 inspectors.

We examined the ATF's revised calculation to identify the differences that account for the reduction in staff needs as compared with its previous projection. First, the revised calculation assumes a smaller population of licensees to be inspected. Specifically, the revised calculation excludes gun collectors, which reduces the population of Federal Firearms Licensees to be inspected from approximately 104,000 to about 67,000. Second, the revised calculation assumes that each compliance inspection will require about 60 hours of direct time and that indirect time, which includes activities such as leave and training, will add another 25 percent for a total of 80 hours. This is an increase of about 17 hours over the ATF's earlier calculation, which assumed that inspections would take an average of 63 hours, a figure that included indirect time.[5] Because we have not conducted a follow-up inspection to assess the accuracy of the ATF's revised calculation, we cannot endorse a specific number of ATF staff needed to conduct inspections of firearms and explosives licensees.

Nonetheless, because the calculations that the ATF provided to us on September 23, 2005, are based on the agency's current workload of firearms dealers and explosives licensees, the staffing needs would increase if the ATF's authority is expanded. Currently, the ATF only inspects explosives storage facilities owned by state and local governments or other public entities when the owners invite the ATF to perform such an inspection. While some state and local governments have requested these inspections, the numbers are small. During fiscal year (FY) 2003, ATF inspectors conducted 39 inspections of government-owned explosives storage facilities. Our understanding is that number of such inspections increased to about 100 in FY 2005. Overall, that is still not a significant portion of the ATF's workload. Therefore, if the ATF's responsibility is expanded to include inspections of public explosives storage facilities, it must adjust its staffing requirements accordingly.

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[5] Potential reasons for the average inspection time increase may be that inspections of collectors took less time than other compliance inspections, so excluding them could cause the average time to increase. In addition, the ATF has reported to us that it now requires more thorough inspections and that it now requires application inspections to be conducted in person rather than by telephone.

In addition to obtaining adequate staffing levels, the ATF's resources must be distributed appropriately. In examining the ATF's resource levels, we noted that the ATF had not distributed its inspectors among the Field Divisions to match the distribution of firearms and explosives licensees, resulting in significant workload imbalances. The imbalance in staff was clearly correlated to the time that each Field Division spent conducting inspections, with those Field Divisions that had fewer inspectors relative to the number of dealers spending less time on each inspection.

In response to our recommendation, the ATF restructured the management of its field organization to begin aligning its inspector workforce to reflect the number of firearms and explosives licensees in each ATF Field Division. As a part of this restructuring, the ATF combined four management positions and began the process for opening new field offices. In addition, the ATF reassigned inspectors to previously understaffed areas, such as the southwest United States, and has developed a workload model for assigning new inspectors to areas that need them the most. However, if the ATF's authority is expanded to include inspections of publicly owned explosives storage facilities, the workload model for distributing inspector resources may have to be reconsidered once the full population of those facilities is known.

IV. SUMMARY

In summary, although our report reflects our strong concerns with the deficiencies we found, it appears that the ATF is taking steps to correct those deficiencies. We believe that the actions that the ATF has reported to us will make it better prepared if Congress expands its authority to include inspections of publicly owned explosives storage. Also, if Congress includes a requirement to conduct background checks on individuals authorized to access the explosives in these public storage facilities, the actions that the ATF has reported it is taking should place it in a better position to conduct the background checks required to identify prohibited persons.

This concludes my prepared statement. I would be pleased to answer any questions.