The firearms industry believes that a lost or stolen firearm is always a matter of concern. Fortunately, the number of firearms lost or stolen while in transit to or from federal firearms licensees (FFLs) is a very small fraction of all firearms made or imported into the U.S., only about 0.16 percent, according to data from a 2015 Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) report. The percentage is much smaller, when one considers the total number of new and used firearms that move in interstate shipments each year (e.g. from manufacturer to distributor, distributor to retailer, between retailers, warranty and repaired firearms shipped to the manufacturer and back to the consumer, etc).

The industry and its common carriers take firearm security issues very seriously. This de minimis rate of loss shows the excellent performance of ATF, carriers and the industry in limiting in-transit losses. Common carriers and industry members cooperate fully in voluntarily reporting to ATF when they become aware of those rare instances when firearms are lost or stolen while in transit.

Despite these facts, ATF has issued regulations changing the rules for reporting firearms lost or stolen in transit. Effective Feb. 11, 2016, the regulations put the onus on shipping FFLs to notify both ATF and the appropriate local law enforcement agency of the theft or loss of a firearm from inventory within 48 hours of discovery. The problem here is that by making the shipping FFL responsible for firearms that have already left their physical inventory, the regulation inappropriately expands the definition of inventory to include those firearms entrusted to the care of a common carrier that never reached their intended destination.

This runs counter to established commercial practices whereby firearms are almost universally shipped “F.O.B. Factory,” under the Uniform Commercial Code, where legal title and the risk of loss is transferred to the buyer at shipment. In addition, under federal law, once a firearm is shipped the shipping FFL must timely record the “disposition” of that firearm in their Acquisition & Disposition Record (a/k/a “bound book”).

Although the regulation purports not to require sellers or transferors to follow-up on each and every shipment to ensure delivery of each firearm, the possibility certainly exists that if a firearm is never discovered lost or stolen and is later used in a violent criminal offense that the victim may seek redress with the non-reporting shipper despite no triggering discovery of the loss or theft of the firearm.

**Tracking Requirements Would Impose an Onerous Burden on Firearms Industry Members.**

Manufacturers, importers and distributors have no practical way to determine that a firearm has been lost or stolen while it is in transit. At best, the transferor/seller can only ascertain – at considerable expense and effort – whether a firearm did not arrive at its intended destination. In 2000 ATF proposed a more expansive version of this regulation that would have required each manufacturer, importer, distributor and retailer to perform a daily check of every individual firearms shipment that is in transit and expected to be delivered on that given day. The proposal to FFLs confirm deliveries failed to recognize the industry’s widespread use of a two-tier distribution system. Most firearms are shipped at least twice – from the importer or manufacturer to the distributor and then from the distributor to the retailer. This check would begin with a telephonic or electronic request to the carrier to provide a facsimile or email copy of a delivery receipt since most receipts are not available on document

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Additionally, there has been no evidence presented of a significant public safety problem with firearms being lost in transit and subsequently being misused by criminals, that would justify this added regulatory requirement, let alone the expense and regulatory burden. The fortunate rarity in loss/theft of firearms in transit is partially due to the fact that federal law requires that the labeling and outer box markings on all firearms shipments should not identify the contents as containing a firearm. Not only has ATF not established there is a significant problem, Congress, in enacting the Gun Control Act by exercising its “Commerce Clause” powers under the Constitution, did not give ATF the authority to impose this new shipment tracking and reporting requirement. That is why the current interstate theft/loss report is voluntary. And, as a practical matter, it is unnecessary.

**FFLS HAVE STRONG LEGAL AND ECONOMIC INCENTIVES TO PREVENT LOSS AND THEFT.**

Federal law requires all FFLs to keep and maintain a record of all firearms in their Acquisition and Disposition (A&D) record, called a bound book. Licensees must also report to the ATF and local police within 48 hours of determining that a firearm has been lost or stolen. The ATF enters the details about each of these firearms into its Firearms Tracing System for use by law enforcement. According to the ATF, “these reports provide law enforcement with serial numbers and reliable descriptions.”

Through our “Taking Stock” initiative, the National Shooting Sports Foundation, the firearms industry trade association, encourages FFLs to conduct periodic inventories using the most appropriate method for each business. We also endorse products for retailers to assist them in securing their inventory from theft. These voluntary measures have been effective in keeping the number of lost or stolen firearms to a small fraction of one percent. To support law enforcement efforts in these rare, unfortunate cases, the NSSF matches any reward offer by ATF in connection with the theft of firearms from a licensed firearms retailer.

FFLs have a strong economic incentive to protect their inventory. Businesses are not in the habit of paying for products they do not actually receive. They know what they order. It is impossible to sell a product that has been lost or stolen. The combination of legal recordkeeping and reporting requirements, supported by voluntary responsible business practices and market forces, have effectively kept firearms losses and thefts from FFLs to minute levels.