

Dear Audrey:

As you are aware, the Administrative Procedure Act (APA) requires that agencies give interested parties "the right to petition for the issuance, amendment, or repeal of a rule." 5 U.S.C. § 553(e). Accordingly, and on behalf of the National Firearms Act Trade & Collectors Association ("NFATCA"), we hereby submit a petition for rulemaking for the issuance, amendment, and repeal of regulations regarding the requirement of CLEO approval on ATF Forms 1 and 4 that are submitted on an individual basis, as well as other requirements related to 27 C.F.R. § 479.63 and 27 C.F.R. § 479.85. In place of this requirement, NFATCA requests that the Bureau adopt a CLEO notification process that will include a full NICS check for principal officers of a trust or corporation receiving such firearms for the trust or corporation. Policy justifications for this proposal are attached and suggested textual changes to the applicable Regulations are set forth below. Thank you for your time and consideration of this matter. If you have any questions, please feel free to contact me.

Respectfully yours,

Mark Barnes
Outside Counsel to
NFATCA

I. Request for Rulemaking

We request that

- 479.63 and 479.85 be amended to require photographs and fingerprints of persons responsible for directing the legal entity;
- Requiring a statement concerning the applicant's nonimmigrant alien status similar to 27 CFR 478.44(a)(1)(ii);
- Adding instructions similar to those on ATF Forms 7 regarding applications for Federal Firearms Licenses; and
- Eliminate the requirement for CLEO approval of Forms 1 and 4 for natural persons, and require notification to CLEOs for all Form 1 and Form 4 applicants.

These amendments would require background checks on all persons acquiring NFA firearms via a legal entity. These changes would reduce the documentation burden on applicants; enable ATF to accomplish one of its primary objectives of preventing criminal misuse of firearms. Elimination of the ATF Form 5330.20 by adding a citizenship statement to the transfer forms would reduce human effort for both the public and ATF while reducing funds expenditures for printing, copying, and handling the form.

II. Regulatory Amendments

We request amendments to 27 CFR § 479.63 and 479.85 as follows (altered language in italics):

479.63 Identification of applicant

The applicant (*including in the case of a corporation, partnership, trust, or association, the Primary individual possessing, directly or indirectly, the power to direct or cause the direction of the management and policies of the corporation, partnership, trust, or association*) shall securely attach to each copy of the application, Form 1 (Firearms), in the space provided on the form, a photograph of the applicant 2 x 2 inches in size, clearly showing a full front view of the features of the applicant with head bare, with the distance from the top of the head to the point of the chin approximately 1\1/4\ inches, and which shall have been taken within 1 year prior to the date of the application. The transferee shall attach two properly completed FBI Forms FD-258 (Fingerprint Card) to the application. The fingerprints must be clear for accurate classification and should be taken by someone properly equipped to take them. *If the applicant is a nonimmigrant alien, applicable documentation demonstrating that the nonimmigrant alien falls within an exception to or has obtained a waiver from the nonimmigrant alien provision (e.g., a hunting license or permit lawfully issued in the United States; waiver. A certification that the local chief of police, sheriff of the county, head of the State police, State or local district attorney or prosecutor, or such other person whose certificate may in a particular case be acceptable to the Director has received a copy of the application shall be completed on each copy of the Form 1 (Firearms).*

479.85 Identification of transferee

The applicant (*including in the case of a corporation, partnership, trust, or association, the Primary any individual possessing, directly or indirectly, the power to direct or cause the direction of the management and policies of the corporation, partnership, trust, or association*) shall securely attach to each copy of the application, Form 4 (Firearms), in the space provided on the form, a photograph of the applicant 2 x 2 inches in size, clearly showing a full front view of the features of the applicant with head bare, with the distance from the top of the head to the point of the chin approximately 1\1/4\ inches, and which shall have been taken within 1 year prior to the date of the application. The transferee shall attach two properly completed FBI Forms FD-258 (Fingerprint Card) to the application. The fingerprints must be clear for accurate classification and should be taken by someone properly equipped to take them. *If the applicant is a nonimmigrant alien, applicable documentation demonstrating that the nonimmigrant alien falls within an exception to or has obtained a waiver from the nonimmigrant alien provision (e.g., a hunting license or permit lawfully issued in the United States; waiver. A certification that the local chief of police, sheriff of the county, head of the State police, State or local district attorney or prosecutor, or such other person whose certificate may in a particular case be acceptable to the Director has received a copy of the application shall be completed on each copy of the Form 4 (Firearms).*

III. Policy Justification

Background

- ATF has long held that NFA firearms may be transferred to legal entities e.g. a Living Trust, or a Corporate entity with no background checks (stated in the newest FFL newsletter 01/09)
- We believe this position is contrary to the National Firearms Act, ATF's mission, and public safety
- We also believe that this activity exposes ATF to a serious liability should an NFA weapon, lawfully acquired, by a prohibited person, be used in a violent crime
- The National Firearms Act was enacted in 1934 to screen owners of various types of NFA Firearms
- This was an effort to reduce the likelihood of criminal misuse of NFA Firearms
- The GCA was amended in 1994 by the Brady Handgun Violence Protection Act to require background checks for non licensees
- Applicable codes:
- 18 U.S.C. § 922(t) provided NICS
- 27 CFR § 478.102 implemented the statutory requirements
- 18 U.S.C. § 922(t)(3)(B) and 27 CFR 478.102(d)(2) provided an exemption to background checks, fingerprints, and photographs when firearms when NFA firearms are approved for transfer when a person acting on behalf of a legal entity is acquiring the firearm
- No statutory language exists in the NFA to require the approval of a transferee's acquisition of a NFA firearm by the local Chief Law Enforcement Officer (CLEO)
- ATF has granted an individual applicant's CLEO this authority under 27 CFR § 479.63 and 479.85
- Some CLEOs express a concern of perceived liability; that signing an NFA transfer application will link them to any inappropriate use of the firearm

Lack of CLEO Cooperation

- The lack of cooperation on the part of many CLEOs in recent years has forced larger numbers of applicants to acquire NFA firearms via a trust, or corporate entity to avoid the probability of the CLEO not signing off on NFA firearm acquisitions
- In 2000 there were 900 such Corporate entity or Trust transfers
- In 2008 - over 10,000
- A staggering increase of over 1000%
- The objective under this scenario on the part of most applicants is to avoid the CLEO, and the frequently arbitrary CLEO decision-making process

The History and Issues with CLEO Signature

- Put into place in the early 1930's because of the lack of any NCIC system being available. This process is now outdated and is causing additional problems
- Served as a process to assist ATF in investigating applicants under the NFA
- This process became antiquated with the advent of NCIC and ATF's requirement of researching state laws to comply with 26 U.S.C. § 5812(6) and 26 U.S.C. § 5822(e) which stipulates that applicants shall be denied if the transfer, receipt, making, or possession would place the transferee or maker in violation of law
- The CLEO signature is no longer taken as verification of state law compliance as it was intended and does not alleviate the burden on the NFA Branch to verify state law where the transferee resides
- Hence applicants avoid the potential of the CLEO process by forming a Trust or Corporate entity