

_____)	
Machine Guns, Destructive Devices)	
and Certain Other Firearms;)	Docket No. ATF 41P
Background Checks for Responsible)	
Persons of a Corporation, Trust or)	RIN 1140-AA43
Other Legal Entity With Respect to)	
Making or Transferring a Firearm)	
_____)	

Comments in Opposition to Proposed Rule ATF 41P

I'm a resident of Florida who has a Gun Trust[®] that is used for estate planning purposes in connection with firearm related types of goods and services.

On September 9, 2013, the Bureau of Alcohol, Tobacco, Firearms, and Explosives ("ATF" or the "Agency") published a Notice of Proposed Rulemaking ("NPR") in the Federal Register at Volume 78, pages 55014 through 55029, to institute this rulemaking proceeding with respect to firearms regulated under the National Firearms Act ("NFA"), 26 U.S.C. §§ 5801-5872. ATF's current regulations under the NFA are codified at 27 C.F.R. Part 479.

With the exception of ATF's proposal to add new section 479.90 with respect to decedents' estates, I oppose the remainder of the proposed rulemaking. ATF has failed to show any real benefits from its proposed rule. Speculating that there may be some small benefit from its proposed rule without even taking the trouble to estimate the size of that benefit or its value turns the entire process into a political witch hunt. With no specific benefits specified, even the \$11,963,087 figure ATF compiles for annual cost to regulated parties is sufficient to illustrate the proposal should be abandoned. Adding in the additional annual costs ATF assigns to State and

local agencies of \$1,263,560 and the additional annual costs to ATF itself of \$1,807,894 only serves to reinforce that thought.

I'm also concerned that ATF has claimed some particular cases that demonstrates the need for this regulatory change, but refuses to give out any details whatsoever. It appears that existing law and regulations worked just fine so please state how this NPR will fix this problem you allude to by publishing the details.

In Brevard County, FL it would take a minimum of 1 hour travel time to get to the Sheriff's office and back home to obtain a Chief Law Enforcement Officer ("CLEO") sign off. A copy of my Gun Trust® is about 50 pages in length plus additional assignments, and declarations that comprise another 20+ pages. The fee for fingerprinting is about \$35. Two passport photos is about \$15 at the local pharmacy. Notary costs for the Brevard Sheriff's application (attached as Exhibit A) is about \$20. So for me the costs associated with the proposed rulemaking would be about \$85 per transaction which doesn't include an estimated transit expense of \$15. I might have to take time off work to get this done so you can add in about \$400 in lost wages and a resulting decrease in productivity for the health care system. I'm estimating about 4 hours to prepare all documents for the ATF and the Brevard County Sheriff. I should also point out that to obtain a CLEO sign off here in Brevard County a rather invasive application (Exhibit A) is required that requests information that is not required by either the Federal government nor the State of Florida (Military record, copy of concealed weapon permit, name and type of vault/safe, alarm company information, marital status, social security number, previous names, and driver's license number, etc.) to purchase any legal firearm whether it is NFA or not.

As mentioned previously, in Brevard County, FL I can currently obtain a CLEO sign off from the Brevard County Sheriff's department which requires filling out a four (4) page form (Exhibit A). However, that can change as the Sheriff's office is a political one. In years forward there may be an anti-gun Sheriff elected that could refuse to sign such a form. The last elected Sheriff's form was much more extensive and was obviously used to impede citizens from acquiring NFA items that the Congress and State of Florida has deemed suitable for purchase by its citizens.

In my irrevocable trust (created by Attorney David M. Goldman of Jacksonville, FL) I am considered to be a Settlor. My trust specifically addresses many issues in regards to who or how NFA items may be used. Under Florida law my irrevocable trust is allowed to exist for 360 years (currently about 359 years) in total before any trust assets can be distributed, but my beneficiaries are allowed to use the trust assets in the meantime. Only trustees are allowed to possess them and they are required to sign a Trustee Declaration (Exhibit B). In the trust package I prepared for my family I have also included a 15 page memorandum that includes most all of applicable NFA law that would be useful to them. I also included a DVD that has all current NFA forms and applicable handbooks (National Firearms Act Handbook, National Firearms Act Branch Pamphlet, National Firearms Regulations Reference Guide, and associated web links to ATF), applicable firearm manuals, and other information that would be useful for them to utilize trust assets (both NFA and other firearm related goods and services). I consider my irrevocable trust to well prepare my beneficiaries for all aspects of utilizing NFA assets.

Your projections on cost are also heavily skewed to the light side because I currently have 21 beneficiaries who would be considered "responsible persons" under the proposed rulemaking. In a hundred years I expect to have at least 50 beneficiaries and they will expand

exponentially in the 359 years the trust is in effect under Florida laws. Do we also count the unborn as a “responsible person”? If so, you can add in another 2 people. On that same note, do we fingerprint babies and get mug shots at the time of birth? Since children’s faces change drastically as they grow is there a requirement for new mug shots yearly? What will happen if a child who has a CLEO sign off then becomes a prohibited person before they reach legal age to actually possess a firearm? I suspect that all CLEO’s are going to refuse to sign off on a child until they reach a legal age as determined by each individual state. So how will children who are beneficiaries of my trust be treated by ATF? More importantly does ATF have the statutory ability to change existing trust laws passed by Congress?

On October 17, 2013 I contacted the following law enforcement departments seeking information because my beneficiaries are in California, Oregon, and Montana:

Huntington Beach Police Department, CA: I talked to several people and no one even knew what a Form 1 and Form 4 was. I explained and was told that there would be no CLEO sign offs because they are all illegal in California. They weren’t interested in the fact that the weapons would be in another state. They suggested I call the Orange County Sheriff’s office.

Orange County Sheriffs, CA: No one I talked to even knew what a Form 1 or Form 4 was. I was finally told that someone would call me back. No one has called me in 6 weeks even though I have made several follow up calls. Several of my beneficiaries will be unable to get the ATF specified CLEO sign off even though all are upstanding citizens who can legally buy firearms.

Lake County Sherriff’s, MT: Was told immediately that they would sign off on both Form 1 and Form 4’s.

Missoula County Sheriff's, MT: Called and was put immediately through to the Sheriff's office. No problems here getting CLEO sign offs.

Multnomah County Sheriff's, OR: It appears that getting a CLEO sign off is not possible at this time under any circumstances. Several of my beneficiaries will be unable to get the ATF specified CLEO sign off even though all are upstanding citizens who can legally buy firearms.

After my dismal results of trying to get information from various California law enforcement agencies I placed a call and email to the California Department of Justice, Bureau of Firearms in Sacramento on October 23, 2013. I got a return call around the middle of November from Annr C. (she requested I not publish her name) and we had a 30 minute conversation regarding the aspects of 41P as it related to California. After explaining to her what a Form 1 and Form 4 was and the necessity of getting a CLEO sign off for my beneficiaries, she stated "that it would not be possible for California to sign for my beneficiaries living in California and that the only way that could possibly happen is if the ATF requires all states to sign these forms." She did point out that "California does things differently and even with a mandate from ATF they still might refuse to sign any CLEO's." The California Bureau of Firearms is the only entity that can sign these forms in California and "currently only movie companies can get silencers, any other weapon, short barreled rifle, short barreled shotgun, or machine gun permits."

Another issue of CLEO sign offs is that I have one of my beneficiaries who lives in Paris, France (who is a USA citizen). So would I be required to get the Paris Police or the nation of France to sign off on this? What would the procedure be on international sign offs? Would a US Embassy take care of this? Can ATF require the State Department to do this without new law? Would my beneficiary have to come to the USA every time I wanted to buy something new?

What address would she use as a USA residential record as she has been living in Paris for several years now? Could she choose any residential address in the USA that would be likely to approve the CLEO? If my beneficiary needs to come to the USA then you can add onto your projected expenses about six (6) to eight (8) thousand dollars for each item my trust purchases for air travel, hotel, and car expenses.

My beneficiaries are all people from my grandparents going forward. One of my nephews has served in a California penal institution so he was specifically excluded as per the terms of my irrevocable trust. Since it is possible for him to get a Governor's pardon and his firearms rights restored at some future date, does he now also become a "responsible person" under the 41P Proposed Rulemaking?

I also have a niece who is currently a beneficiary, but is having some legal troubles at the moment. If she resolves these problems she would then be fully entitled to be a beneficiary. Does she also need a CLEO sign off even though she is currently prohibited from possessing or using trust firearms per the instructions of my Gun Trust®? One of my same niece's sons (who is a beneficiary) is currently serving in the military. Will his commanding officer be able to do a CLEO sign off or would the trust have to wait till he returns to USA soil? In this case I believe the 30 day rule should be extended to several months as the military moves very slowly.

Another more alarming issue is that President Obama and Attorney General Holder are on record numerous times publically stating that US drug laws will not be enforced in the States of Washington or Colorado considering "that the people have spoken" in regards to recreational marijuana use. Does this mean that if I have beneficiaries in either of those two states now or over the next 359 years that they are allowed to possess firearms, even though the BATFE Form

4473 specifically states that anyone who is habituated to marijuana cannot own or buy a firearm? What happens if some of my beneficiaries have “Medical Marijuana” permits from states other than Colorado or Washington? Two of my beneficiaries actually have a Medical Marijuana permit issued by their respective States. My trust instructions specifically excludes them from handling trust assets, unless they remove themselves from that permit process. What would be the purpose of getting them a CLEO signoff as required by the NPR when my trust already has specific instructions in this regard? Is it ATF’s intent for me to violate NFA laws?

What happens if I want to purchase a NFA item and any of my beneficiaries is in serious medical trouble and can’t get a CLEO sign off within the required 30 days? Being a Registered Nurse I know that strokes, heart attacks, and ICU stays are a fact of life and can make getting a CLEO sign off almost impossible. I’m fairly sure that law enforcement organizations don’t usually make hospital visits to get fingerprints and photographs. Would ATF accept a picture of a beneficiary on a ventilator? What would be the procedure for ascertaining the validity of fingerprinting or photographing a comatose or sedated beneficiary? How would ATF account for the required signature on a Form 1 or Form 4 if they are sedated or comatose? Given this NPR these are all things that need to be specified in any regulatory action that requires such a quantum leap in accepted practice. Is it ATF’s intent to completely stop the sale of NFA items by regulatory action?

What happens if I have a new family member move in to my home and the political winds have changed when a CLEO signature isn’t available anymore? Doesn’t this open them up to a constructive possession charge by ATF even though they are trust beneficiaries?

In the NPR you are requiring that “If other than an individual, the applicant shall provide its name, address, and employer identification number...” Under federal law, Settlor’s (irrevocable trusts) are not required to have an employer identification number (EIN) and use their own social security number. After the Settlor is deceased the trust then needs to file for an EIN. So how does ATF intend to deal with Settlor trusts?

Since it seems likely many of my beneficiaries will be denied a CLEO sign off regardless of what state the NFA items are actually stored in, I would suspect that lawsuits against ATF as well as many state and local governments would be the norm. I didn’t see any expenses accounted for legal challenges in your summation so who’s going to be paying for it? Can the ATF afford 41,000 (more if you figure in the beneficiaries as well) Federal lawsuits a year? Is it ATF’s intention to divert Department of Justice’s scarce taxpayer funds in the pursuit of non-criminal issues? Since any NPR will entail specific changes in many trusts (my irrevocable trust allows for changes when ATF regulations change) why have you not accounted for legal expenses associated with said changes? This could add a considerable burden to USA citizens in new legal expenses.

I would like to see ATF codify a reasonable time frame to approving NFA transfers. 60 days from receipt of forms seems reasonable as they can do transfers to government agencies in less than two weeks. In the NPR, ATF states that the “Time needed to conduct and review background check by ATF” is only “15 minutes.” ATF currently has 27 examiners processing NFA forms so I would think this is reasonable. Perhaps the NFA tax should go directly to support the NFA branch, rather than into the general fund of the USA, as that would help clear the current backlog of about 10 months in NFA applications.

The use of the CLEO sign off should be totally eliminated for all transfers. While it was a workable system in 1934 it seems to be an anachronistic throwback in this day and age whereas the NICS system seems to be working just fine for other types of firearm transfers. It should be noted that anyone who passes a NICS check can legitimately purchase a suppressed machinegun or any other NFA item like a 40 mm grenade launcher.

Another simple idea is to include a spot for entering a FBI UPIN number directly onto Form 1 and Form 4's if ATF ultimately decides to proceed with this NPR. I personally have a UPIN and have wondered why it's not on these forms. Seems like it would easily clear up problems if a citizen has gone to the trouble of getting one from the Federal Bureau of Investigation.

My final suggestion is that you should change the Form 4473 to require a NICS background check at the time of actual transfer from the NFA dealer to the legal recipient. This is a simple fix that costs relatively nothing and obviates the crazy scheme that ATF is proposing to get rid of the problem you have stipulated in the Federal Register/Vol. 78, No. 174, Monday, September, 9, 2013/Proposed Rules under **II. Petition: Item A**

Considering President Obama recently signed the Arms Trade Treaty one has to wonder if he's trying to legislate an unapproved treaty through the backdoor of regulation. If that's the case I suspect ATF will go after every single NFA item in existence and insist on confiscation of anyone who can't immediately (in 30 days) get all the paperwork done. This is something that ATF needs to think about because the last thing we need is a bombshell like that.

Attachments:

Exhibit A: Brevard County Sheriff's Office Application for Transfer of Firearm / Manufacture

Exhibit B: Trustee Declaration

Exhibit A:

Brevard County Sheriff's Office
Application for Transfer of Firearm / Manufacture



BREVARD COUNTY SHERIFF'S OFFICE
Application for Transfer of Firearm / Manufacture

Date: _____

Name: _____
(Last) (First) (Middle)

Aliases: _____

Date of Birth: _____

Place of Birth: _____

Social Security Number: _____

Drivers License Number: _____ State: _____

Marital Status: Single ___ Married ___ Separated ___ Divorced ___

Spouse's Name: _____
(Last) (First) (Middle)

Spouse's Address: _____

Spouse's Phone: Home _____ Work _____

Applicant Phone: Home _____ Work _____
Cell phone _____

Current Address: _____

(City) (State) (Zip Code)

How long at this address: _____

Are the gun(s) kept in a secure facility and / or burglar alarm system? _____

If guns kept in secure vault, please state name, brand, capacity and type:

If guns kept in safe with alarm system, please state type of system and if monitoring service is used to contact the Sheriff's Office, the name, address and telephone number of monitoring service:

If guns are kept in a vault, where is vault located and will firearm be secured?

Brand, caliber (gauge), serial number and description of weapon:

Have you ever been arrested? _____

Prior Record: (if additional room needed, please write on back)

	Year	Charge(s)	State
1.	_____	_____	_____
2.	_____	_____	_____
3.	_____	_____	_____
4.	_____	_____	_____
5.	_____	_____	_____

Are you presently on probation or parole? Yes _____ No _____

If yes, Probation Officer's Name: _____

Address: _____

Phone Number: _____

Are you presently a party to any divorce or child custody litigation? _____

If so, please indicate the style of the case, the case number and where it is pending with a general description of the case.

Have you been in the military service? Yes _____ No _____

If yes, Branch? _____

Dates of Service: _____ to _____

Type of Discharge: _____

Rank at Discharge: _____

Military Occupational Specialty: _____

Please answer yes or no to the following:

1. Are you under indictment or information in any court for a crime punishable by imprisonment for a term exceeding one year?
Yes _____ No _____
2. Have you been convicted in a court of a crime punishable by imprisonment for a term exceeding one year?
Yes _____ No _____
3. Are you subject to a court order restraining you from harassing, stalking, or threatening an intimate partner or child of such partner?
Yes _____ No _____

Please attach a completed transfer form (Form 4) or (Form 1) and completed fingerprint cards. If you are a law enforcement person, attach a copy of your I.D. If you have a concealed weapons permit, please attach a copy.

I HEREBY SWEAR OR AFFIRM, UNDER OATH, THAT ALL OF THE INFORMATION FURNISHED BY ME IN THIS APPLICATION IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE.

Dated: _____ Signed: _____

Sworn to and subscribed before me this _____ Day of _____
20____.

Personally known _____ Drivers License Number _____

Notary Public
My Commission Expires: _____

Exhibit B:

Trustee Declaration

Trustee Declaration

I, xxxxxxx, as Trustee of the xxxxxx TRUST dated xxxxxxx do hereby state the following:

- I am eighteen years of age or older;
- I am not a person who is Prohibited from owning or possessing Firearms;
- If the Settlor shall become subject to a restraining order or other similar order, I shall not allow the Settlor, during the pendency of the restraining order, to possess or use any firearms, ammunition or electronic incapacitation devices of the Trust.
- I will review the firearms laws of the state that I live in;
- I understand that I cannot purchase firearms regulated by the NFA from a Dealer until I reach the age of 21 and that if I am a Limited Purpose Trustee or Short Term Trustee I may not buy or sell assets belonging or on behalf of this Trust;
- I understand that certain firearms may require parental supervision until I reach the age of 21;
- I understand that I may not let others who are not Trustees of this Trust or are authorized under the terms of this Trust use firearms regulated by the NFA.
- I understand that if I am a Limited Purpose Trustee my rights will expire at midnight unless otherwise granted but under no circumstances shall my rights last more than 90 days.

By my signature below, I agree to accept the terms above and to abide by the terms of the xxxxxxx TRUST.

Dated this _____ day of _____, 20_____.

xxxxxxx

Witness: _____

Printed Name: _____

Witness: _____

Printed Name: _____