

Introductory Statement:

The following collective comments are in response to each of the following Federal Register Notices:

A) FORM 1

AGENCY: Bureau of Alcohol, Tobacco, Firearms, and Explosives;
Department of Justice.
OMB Number: OMB 1140-0011
Title: Application To Make and Register NFA Firearm, ATF FORM 5320.1 ("FORM 1")
Release Date: 10/30/2025
Comment Period: 10/30/2025 to 12/01/2025

B) FORM 4

AGENCY: Bureau of Alcohol, Tobacco, Firearms, and Explosives;
Department of Justice.
OMB Number: OMB 1140-0014
Title: Application To Transfer and Register NFA Firearm (Tax-Paid), ATF FORM 5320.4 ("FORM 4")
Release Date: 10/30/2025
Comment Period: 10/30/2025 to 12/01/2025

C) FORM 5

AGENCY: Bureau of Alcohol, Tobacco, Firearms, and Explosives;
Department of Justice.
OMB Number: OMB 1140-0015
Title: Application To Transfer and Register NFA Firearm (Tax-Exempt), ATF FORM 5320.5 ("FORM 5")
Release Date: 10/30/2025
Comment Period: 10/30/2025 to 12/01/2025

In the interest of brevity, the following comments have been prepared to address the same issue identified by the Commentor in the changes provided in each of FORM 1, FORM 4, and FORM 5; that is the allowance of a married couple to qualify as a "Person" as an "Other Legal Entity - a married couple registering jointly" and be a lawful Applicant / Transferor / Transferee for registration of NFA regulated firearms.

Disclaimer

These comments are submitted in my personal capacity as an interested citizen. The opinions and views expressed are my own, formulated on my own, and prepared on my own with no help or assistance of any kind. In making these comments, I am not acting, directly or indirectly, without limit, as a legal representative of any other person, group, organization, affiliation, or entity. In making these comments, I am not speaking, directly or indirectly, without limit, on behalf of any other person, group, organization, affiliation, or entity, nor have I been authorized to do so. I have not received, directly or indirectly, without limit, any compensation in any FORM whatsoever for my efforts in the preparation and submission of these comments. These submitted comments, including any errors or omissions, are my own, in my personal capacity as an interested citizen and are not to be attributed, directly or indirectly, without limit, to any other person, group organization, affiliation, or entity.

Comments

1) Nature of the Notice:

Generally, the Federal Register Notice is for changes necessary for informational gathering purposes., not substantive rule making resulting from an amendment in enabling statutes or changes to the substantive content of previously issued regulations. As noted in the notice, the proposed changes result from the enactment of Public Law Public Law 119-21 139 STAT.247, SEC. 70436. REDUCTION OF TRANSFER AND MANUFACTURING TAXES FOR CERTAIN DEVICES, reducing the tax amount to \$0 for certain firearm subject to registration under enabling statues of the National Firearms Act and the Gun Control Act. The focus of these comments is limited to those parts of the Notice containing proposed substantive changes to statutory law and BATFE regulations allowing for a married couple to qualify as a “Person” as an “Other Legal Entity - a married couple registering jointly” and be a lawful Applicant / Transferor / Transferee for registration of NFA regulated firearms.

2) The proposed changes to FORM 1, FORM 4, and FORM 5:

The focus of these comments is upon the following proposed changes to ATF FORM 5320.1 Rev. Jan 2026 (FORM 1); ATF FORM 45320.4 Rev. Jan 2026 (FORM 4) and ATF FORM 5320.5 Rev. January 2026 (FORM 5) :

a. FORM 1

- i. No change has been made to the certification statement of the Applicant’s Certification statement above items 7, 8 and 9 of FORM 1, requiring both spouses of a marital relationship to sign on behalf of

the marital relationship and letting only one spouse sign as a responsible person on behalf of the marital relationship.

- ii. No change has been made to the Certification statement of the Applicant immediately following item 17 of FORM 1, requiring both spouses of a marital relationship to sign on behalf of the marital relationship and letting only one spouse sign as a responsible person on behalf of the marital relationship.
- iii. No changes have been made to the definition 1 (d) of “Person” to include any indication that “a married couple registering jointly” is a “person” and may be an allowable Applicant.
- iv. A change has been made in the definition 1(e) of “Responsible Person” to include “or a married couple registering jointly,” as an unlicensed legal entity that may be an allowable Applicant.
- v. Regarding the instructions in 2. Preparing application and paying tax:
 - 1. No changes have been made in section d(2) to provide guidance or instructions if an Applicant is an “Other Legal Entity - a married couple registering jointly” to provide the complete legal name of the trust or entity and not including any individual names.
 - 2. No changes have been made in section d (3) to provide guidance or instructions if an Applicant is an “Other Legal Entity - a married couple registering jointly” having two or more locations for the “Other Legal Entity - a married couple registering jointly”. This entity has no principal place of business or principal office.
 - 3. No changes have been made in section d (5) to provide guidance or instructions if an Applicant is an “Other Legal Entity - a married couple registering jointly” to require both spouses to jointly sign the application. The existing language presumptively lets only one spouse sign the certification statement as a responsible person on behalf of both spouses when Applicant is an “Other Legal Entity - a married couple registering jointly”.
 - 4. Changes to section d (6) requiring the production of “legal marriage documents” as supporting evidence of existence of “Other Legal Entity - a married couple registering jointly” as an allowable Applicant other than an individual. No guidance is provided as to what documents are sufficient (i.e. marriage

license, prenuptial agreement, power of attorney – agent, etc...) In contrast detailed instructions are provided for trusts.

- vi. No changes have been made to instruction 2 g. (2) requiring both spouses of a marital relationship to sign on behalf of the marital relationship when Transferee is an “Other Legal Entity - a married couple registering jointly”. The existing language (i.e. “a responsible person...”) presumptively lets only one spouse declare and sign on behalf of both spouses when Transferor is an “Other Legal Entity - a married couple registering jointly”.

b. FORM 4

- i. No change has been made to the language of the Transferor’s Certification statement above item 9 of FORM 4, suggesting that both spouses of a marital relationship must sign on behalf of the marital relationship when Transferor is an “Other Legal Entity - a married couple registering jointly”. The existing language (i.e. “I Declare...”) presumptively lets only one spouse declare and sign as a responsible person on behalf of both spouses when Transferor is an “Other Legal Entity - a married couple registering jointly”.
- ii. No change has been made to the language in item 10 of FORM 4 Transferee necessity statement indicating that both spouses of the a martial relationship must make this statement on behalf of the marital relationship when Transferee is an “Other Legal Entity - a married couple registering jointly”. The existing language (i.e. “I _<name>__ have a reasonable...”) presumptively lets only one spouse make this statement on behalf of both spouses when Transferor is “Other Legal Entity - a married couple registering jointly”.
- iii. No change has been made to the Certification statement of the Applicant immediately following item 18 of FORM 4, requiring both spouses of a marital relationship to sign on behalf of the marital relationship when Transferee is an “Other Legal Entity - a married couple registering jointly”. The existing language (i.e. “I certify...”) presumptively lets only one spouse certify and sign as a responsible person on behalf of both spouses when Transferee is an “Other Legal Entity - a married couple registering jointly”.

- iv. No changes have been made to the definition 1 (d) of “Person” to include any indication that “a married couple registering jointly” is a “person” and may be an allowable Transferor or Transferee.
- v. A change has been made in the definition 1(e) of “Responsible Person” to include “or a married couple registering jointly,” as an unlicensed legal entity that may be an allowable Transferor or Transferee.
- vi. No changes have been made to the definition 1(k) of “Transferor” to include any indication that “a married couple registering jointly” may be an allowable Transferor.
- vii. No changes have been made to the definition 1 (l) of Transferee to include any indication that “a married couple registering jointly” may be an allowable Transferee.
- viii. Regarding the instructions in 2. Preparing application and paying tax:
 - 1. No changes have been made in section d(1) to provide guidance or instructions if a Transferee is an “Other Legal Entity - a married couple registering jointly” to provide the complete legal name of the trust or entity and not including any individual names.
 - 2. No changes have been made in section d (2) to provide guidance or instructions if a Transferee is an “Other Legal Entity - a married couple registering jointly” having two or more locations for the “Other Legal Entity - a married couple registering jointly”. This entity has no principal place of business or principal office.
 - 3. Changes to section d (4) adding “a married couple registering jointly” as an allowable Transferee other than in individual.
 - 4. Changes to section d (5) requiring the production of “legal marriage documents” as supporting evidence of existence of “Other Legal Entity - a married couple registering jointly” as an allowable Transferee other than an individual. No guidance is provided as to what documents are sufficient(i.e. marriage license, prenuptial agreement, power of attorney – agent as may be required by State law, etc...) In contrast detailed instructions are provided for trusts.
 - 5. No changes have been made to instruction 2 h. (3) requiring both spouses of a marital relationship to sign on behalf of the marital relationship when Transferee is an “Other Legal Entity -

a married couple registering jointly”. The existing language (i.e. “a responsible person...”) presumptively lets only one spouse declare and sign on behalf of both spouses when Transferor is an “Other Legal Entity - a married couple registering jointly”. This declaration may not be binding under State law

c. FORM 5

- i. No change has been made to the language of the Transferee statement in item 1 of FORM 5, indicating entitlement to a tax free transfer for both spouses of a marital relationship when Transferee is an “Other Legal Entity - a married couple registering jointly”. The existing language (i.e. “I believe...”) presumptively lets only one spouse be entitled to the tax free transfer on behalf of both spouses when Transferee is an “Other Legal Entity - a married couple registering jointly”.
- ii. No changes have been made to provide for the transfer “by operation of law” in the event of a divorce and dissolution of the marital estate and a Transferor is an “Other Legal Entity - a married couple registering jointly” and Transferee is one of the formerly married spouses.
- iii. No change has been made to the language of the Transferor’s Certification statement above item 9 of FORM 5, indicating that both spouses of a marital relationship must sign on behalf of the marital relationship when Transferor is an “Other Legal Entity - a married couple registering jointly”. The existing language (i.e. “I Declare...”) presumptively lets only one spouse declare and sign as a responsible person on behalf of both spouses when Transferor is an “Other Legal Entity - a married couple registering jointly”.
- iv. No change has been made to the language in item 10 of FORM 5 Transferee necessity statement indicating that both spouses of the a marital relationship must make this statement on behalf of the marital relationship when Transferee is an “Other Legal Entity - a married couple registering jointly”. The existing language (i.e. “I _<name>__ have a reasonable...”) presumptively lets only one spouse make this statement on behalf of both spouses when Transferor is “Other Legal Entity - a married couple registering jointly”.

- v. No change has been made to the Certification statement of the Applicant immediately following item 18 of FORM 5, requiring both spouses of a marital relationship to sign on behalf of the marital relationship when Transferee is an “Other Legal Entity - a married couple registering jointly”. The existing language (i.e. “I certify...”) presumptively lets only one spouse certify and sign as a responsible person on behalf of both spouses when Transferee is an “Other Legal Entity - a married couple registering jointly”.
- vi. No changes have been made to the definition 1 (d) of “Person” to include any indication that “a married couple registering jointly” is a “person” and may be an allowable Transferor or Transferee.
- vii. A change has been made in the definition 1(e) of “Responsible Person” to include “or a married couple registering jointly,” as an unlicensed legal entity that may be an allowable Transferor or Transferee.
- viii. No changes have been made to the definition 1(k) of “Transferor” to include any indication that “a married couple registering jointly” may be an allowable Transferor.
- ix. No changes have been made to the definition 1 (l) of Transferee to include any indication that “a married couple registering jointly” may be an allowable Transferee.
- x. Regarding the instructions in 2. Preparing application:
 - 1. No changes have been made in section d(1) to provide guidance or instructions if a Transferee is an “Other Legal Entity - a married couple registering jointly” to provide the complete legal name of the trust or entity and not including any individual names.
 - 2. No changes have been made in section d (2) to provide guidance or instructions if a Transferee is an “Other Legal Entity - a married couple registering jointly” having two or more locations for the “Other Legal Entity - a married couple registering jointly”. This entity has no principal place of business or principal office.
 - 3. Changes to section d (4) adding “a married couple registering jointly” as an allowable Transferee other than in individual.
 - 4. Changes to section d (5) requiring the production of “legal marriage documents” as substantiating evidence of existence of “Other Legal Entity - a married couple registering jointly” as

an allowable Transferee other than an individual. No guidance is provided as to what documents are sufficient (i.e. marriage license, prenuptial agreement, power of attorney – agent as required by State law, etc...) In contrast detailed instructions are provided for trusts.

5. No changes have been made to instruction 2 h. (3) requiring both spouses of a marital relationship to sign on behalf of the marital relationship when Transferee is an “Other Legal Entity - a married couple registering jointly”. The existing language (i.e. “a responsible person...”) presumptively lets only one spouse declare and sign on behalf of both spouses when Transferor is an “Other Legal Entity - a married couple registering jointly”. This declaration may not be binding under State law

3) Statutory changes provided for in Public Law 119-21, effective July 4, 2025 do not support the proposed changes for “Other Legal Entity - a married couple registering jointly”.

A detailed review of Public Law 119-21 139 STAT.247 SEC. 70436. REDUCTION OF TRANSFER AND MANUFACTURING TAXES FOR CERTAIN DEVICES, subsection (a) provides for a statutory change to Section 5811(a) as follows:

“(a) TRANSFER TAX.—Section 5811(a) is amended to read as follows:

“(a) RATE.—There shall be levied, collected, and paid on firearms transferred a tax at the rate of—

“(1) \$200 for each firearm transferred in the case of a machinegun or a destructive device, and

“(2) \$0 for any firearm transferred which is not described in paragraph (1).”

A detailed review of Public Law 119-21 139 STAT.247 SEC. 70436 subsection (b) provides for a statutory change to Section 5821(a) as follows:

(b) MAKING TAX.—Section 5821(a) is amended to read as follows:

“(a) RATE.—There shall be levied, collected, and paid upon the making of a firearm a tax at the rate of—

“(1) \$200 for each firearm made in the case of a machinegun or a destructive device, and

“(2) \$0 for any firearm made which is not described in paragraph (1).”.

Nowhere in the above enabling statutory language is there any express statutory basis for the proposed changes to include “Other Legal Entity - a married couple registering jointly” as an permissible applicant for the registration of a firearm as presented in the proposed changes to FORM 1, FORM 4 or FORM 5. Commenter argues that any such proposed changes to allow for “Other Legal Entity - a married couple registering jointly” as an allowed applicant on FORM 1, FORM 4 or FORM 5 may require enabling statutory changes for the reason stated below and /or a Notice of substantive rule making in compliance with the Administrative Procedures Act, none of which are present in the current Notices.

4) No existing statutory language applicable to excise tax returns and payment of excise tax supports the proposed changes for an “Other Legal Entity - a married couple registering jointly”.

A detailed review of 26 U.S. Code Subtitle E - Alcohol, Tobacco, and Certain Other Excise Taxes indicates there are no provisions for “Other Legal Entity - a married couple registering jointly” of excise tax returns or authority to collect any excise tax from “Other Legal Entity - a married couple registering jointly”.

26 U.S. Code Subtitle E Chapter 53 - MACHINE GUNS, DESTRUCTIVE DEVICES, AND CERTAIN OTHER FIREARMS

26 U.S.C. § 5811 (b) says in relevant part:

“The tax imposed by subsection (a) of this section shall be paid by the transferor.”

26 U.S.C. § 5812 says in relevant part:

“(a) A firearm shall not be transferred unless (1) the transferor of the firearm...”

“(3) the transferee is identified in the application FORM in such manner as the Secretary may by regulations prescribe, except that, if such person is an individual, the identification must include his fingerprints and his photograph;”

“(4) the transferor of the firearm is identified in the application FORM in such manner as the Secretary may by regulations prescribe;”

26 U.S.C. § 5821 (b) says in relevant part:

“The tax imposed by subsection (a) of this section shall be paid by the person making the firearm.”

26 U.S.C. § 5822 says in relevant part:

“No person shall make a firearm unless he has...”

“(d) identified himself in the application FORM in such manner as the Secretary may by regulations prescribe, except that, if such person is an individual, the identification must include his fingerprints and his photograph;”

“Applications shall be denied if the making or possession of the firearm would place the person making the firearm in violation of law.”

26 U.S.C. § 5841 (a) (3) says in relevant part:

“identification and address of person entitled to possession of the firearm.”

26 U.S.C. § 5841 (b) says in relevant part:

“Each manufacturer, importer, and maker shall register each firearm he manufactures.”

26 U.S.C. § 5841 (c) says in relevant part:

“Each manufacturer shall notify the Secretary of the manufacture of a firearm in such manner as may by regulations be prescribed and such notification shall effect the registration of the firearm required by this section.

26 U.S.C. § 5841 (d) says in relevant part:

“A person shown as possessing a firearm by the records...this section the firearms in his possession which are disclosed by that record as being in his possession.

26 U.S.C. § 5841 (e) says in relevant part:

“A person possessing a firearm registered as required...”

26 U.S.C. § 5852 (d) says in relevant part:

“A firearm registered to a person qualified under...may be transferred by that person without payment...to any other person qualified under this chapter..”

26 U.S.C. § 5852 (f) says in relevant part:

“No firearm may be transferred or made exempt from tax under the provisions of this section unless the transfer or making is performed pursuant to an application in such FORM and manner as the Secretary may by regulations prescribe.”

26 U.S.C. § 5861 says in relevant part that it is:

“...unlawful for any person to:

(a) to engage in business as a manufacturer or importer of, or dealer in, firearms without having paid the special (occupational) tax required by section 5801 for his business or having registered as required by section 5802; or

(b) to receive or possess a firearm transferred to him in violation of the provisions of this chapter; or

(c) to receive or possess a firearm made in violation of the provisions of this chapter; or

(d) to receive or possess a firearm which is not registered to him in the National Firearms Registration and Transfer Record;

26 U.S.C. § 5871 states:

“Any person who violates or fails to comply with any provision of this chapter shall, upon conviction, be fined not more than \$10,000, or be imprisoned not more than ten years, or both.”

26 U.S.C. § 6103 generally applies to the maintenance of the privacy of individual “tax payer” tax return information. For example see:

“(b)(1) The termor with respect to any person...”

“(b) (6) The term “taxpayer identity” means the name of a person with respect to whom a return is filed, his mailing address, his taxpayer identifying number (as described in section 6109), or a combination thereof.”

Without exception, in the enabling statutory provisions recited in FORM 1, FORM 4 and FORM 5, the singular tense is used when referencing a “person”. The plural forms of identifying multiple individuals (i.e. “persons” or “people” or “they”) are conspicuously absent. Because of this one can only conclude that the enabling statutes apply to single and discretely identifiable individuals, inclusive of legal entities having recognized identity distinct from the two or more person who may constitute, control, manage or otherwise legally manifest the actions of the legal entity. Nowhere is there any statutory support for the proposed “Other Legal Entity - a married couple registering jointly” constituting a lawful Applicant / Transferor / Transferee / Manufacturer of a firearm required to be registered under the National Firearms Act or the Gun Control Act.

Lastly it will be noted that applicable excise tax code, 26 U.S. Code Subtitle E Chapter 53 Subchapter B Part II – EXEMPTIONS, specifically provides for exemptions for filing excise tax returns and payment of Excise Taxes. Unlike the income tax code (see 26 U.S. Code Subtitle F Chapter 61 Subchapter A Part II Subpart B - Income Tax Returns Sections §§

6012-6017), 26 U.S. Code Subtitle E Chapter 53 Subchapter B Part II – Exemptions contains no exemptions for the joint and several tax liability that are similar to those found in the tax code (See 26 U.S. Code Subtitle F Chapter 61 Subchapter A Part II Subpart B - Income Tax Returns Sections §§6012-6017). The absence of any statutory exemption from the requirement that a “any person” must make the excise tax return filing and pay the excise tax, it is indisputable that this omission is intentional.

Indisputably, the proposed changes to allow an “Other Legal Entity - a married couple registering jointly” as proposed in the changes is not supported by the text of the enabling statutory provisions. Thus the proposed changes to include of “Other Legal Entity - a married couple registering jointly” as an allowed applicant on FORM 1, FORM 4 or FORM 5 would require enabling statutory changes and /or Notice of Substantive Rule Making in compliance with the Administrative Procedures Act, none of which are present in the current Notices.

In summary , nowhere in the enabling statutory language is there any reference to anything other than the singular FORM of “person”, as a discrete corporal individual or a singular legal incorporeal entity. Because there is no express statutory basis for the proposed changes to include “a married couple registering jointly” as an allowed Applicant on FORM 1, Transferor or Transferee on FORM 4 or FORM 5, any change like this would require enabling statutory changes and/or regulatory changes requiring substantive rulemaking in compliance with the Administrative Procedures Act.

5) Statutory provisions providing for the Joint filing of income tax returns are not applicable and do not support the proposed changes.

26 U.S. Code Subtitle F Chapter 61 Subchapter A Part II Subpart B - Income Tax Returns Section 6012-6017 provides specific statutory basis for the filing of joint income tax returns by married people.

26 U.S.C. 6012 expressly specifies who must file an income tax return including individuals and legal entities such as estates, partnerships, corporations, trust, political organization, homeowners association, and bankruptcy estates.

26 U.S.C. 6013 provides for jointly filing of income tax returns for married people.

Lastly 26 U.S.C. §6015 Specifically provides for statutory relief from joint and several liability on jointly filed income tax return. Specifically, it provides the Secretary to provide for procedures if certain conditions exist to absolve one spouse of the joint and several liability incurred by actions or false statements of the other spouse.

The statutes always specifically refer to “income tax return” and make no reference to any other type of tax return or payment.

In contrast the taxes associated with the registration under the NAF are excise taxes and the enabling statutes are found in a different part of the tax code.

The tax statutes treat income tax and income tax returns under distinctly different provisions of law from excise taxes and excise tax returns. The proposed change to allow for “a married couple registering jointly” that is based on any inference that the joint filing of income tax returns and payment income taxes is permissible and can be applied to filing excise tax returns and payment of excise tax is logically and legally unsupported and clearly incorrect. Because the proposed changes to FORM 1, FORM 4 and FORM 5 to allow for “a married couple registering jointly” lack statutory basis, any change like this would require enabling statutory changes and/or regulatory changes not present in the Notice in compliance with the Administrative Procedures Act.

In summary, any change to include “Other Legal Entity - a married couple registering jointly” as an allowed Applicant on FORM 1, Transferor / Transferee on FORM 4 or FORM 5 requires enabling statutory changes and /or a Notice of substantive rule making in compliance with the requirements of the Administrative Procedures Act, none of which are present in the Notices.

6) No regulatory basis for the proposed change to allow “Other Legal Entity - a married couple registering jointly” as an Applicant / Transferor / Transferee:

The currently existing 27 CFR §479.11. defines a “Person” as:

“A partnership, company, association, trust, corporation, including each responsible person associated with such an entity; an estate; or an individual.”

Indisputably, there is no literal support in the regulatory definition of a “Person” in 27 CFR §479.11 for the proposed change allowing for “Other Legal Entity - a married couple registering jointly” to be within the defined scope of a “Person” and a lawful Applicant / Transferor / Transferee.

A review of related regulatory provisions emphasis that if the Applicant / Transferee is other than an individual, the same or substantially same list of recognized legal entities is utilized. (See 27 CFR §479.63 (a) “If the applicant is not a licensed manufacturer, importer, or dealer qualified under this part and is a partnership, company (including a Limited Liability Company (LLC)), association, trust, or corporation, all information on the FORM

1...”; 27 CFR §479.84 (a) “ If the transferee is not a licensed manufacturer, importer, or dealer qualified under this part and is a partnership, company (including a Limited Liability Company (LLC)), association, trust, or corporation, all information on FORM 4...” 27 CFR §479.90 (a) “The executor, administrator, personal representative, or other person authorized under State law to dispose of property in an estate (collectively “executor”)...”

Further a text search of shows there is no literal support for “married”; “married couple” or “a married couple registering jointly” in any provision of Title 27 :: Chapter II :: Subchapter B :: Part 479 . Similarly Commentor was unable to find any text or reference to any provision of Title 27 :: Chapter II :: Subchapter B :: Part 479 that allows two individuals to file jointly. Individual is always utilized in the singular tense. The language in the enabling regulations make a clear distinction between an Individual as Applicant and one of the specified legal entities as Applicant.

It will also be noted the text of the definition of “Person” in 27 CFR §479.11 is limited to specific legal entities (i. e. “partnership, company, association, trust, corporation, including each responsible person associated with such an entity; an estate; ...” While there is no specific definition for each of the listed legal entities in 37 CFR, each of the specific legal entities have a well recognized, distinct, and identifiable “legal incorporeal person” under State Law.

Even though the statutory definitions of “partnership” “company”, “association”, “trust”, “corporation” and “estate” are present in and determined by the laws of each State; there is one common legal characteristic shared by each of the listed legal entities. The one unifying legal feature is each legal entity listed is a distinct and separately identifiable “legal incorporeal person” from the individuals who may have legal power and authority or control over the legal entity or power to manifest the lawful actions of the “legal incorporeal person”.

In contrast “a married couple registering jointly” as proposed in the changes to FORM 1, FORM 4 and FORM 5 is constituted by two individual persons who do not relinquish their separate legal identities under State law. Each spouse, may own property separately from any “community property estate” created by the marital relationship. One spouse is not held to be legally responsible for the criminal actions of the other spouse. For example, a spouse is not held criminally or civilly responsible for the perjury committed by the other spouse. The law does not proscribe legally enforceable duties and obligations to the community property estate, such as fiduciary duty, duty of care, etc... All of the foregoing is dependent solely upon the State laws applicable to the marital relationship.

To illustrate this point, under Texas state law, the law applicable to general partnerships and joint ventures is found in Business Organizations Code Title 4. A partnership is statutorily defined (See Texas Business Organizations Code, Sec. 152.051 (b) “an association of two or more persons to carry on a business for profit as owners creates a partnership...”) Texas law treats general partnerships and joint ventures as legal entities distinct from their partners. (See TX BOC Sec. 152.056) Of importance under Texas law, partnerships are considered legal entities that can sue and be sued, own property, and are held liable for damages. Partnership property is not considered the individual property of the partners. (BOC TX Sec. 152.101). Partners have a statutorily defined rights and duties (See TX BOC 152.204) including the duty of loyalty (TX BOC Sec. 152, 205) and duty of care (See TX BOC Sec. 152.206). A partner acts as the Agent of the Partnership. (See TX BOC Sec. 152.301).

By comparison a legal marriage relationship under Texas law is defined in Section 32 of Article 1 of the Texas Constitution that states, "Marriage in this state shall consist only of the union of one man and one woman". This contrasts with a Texas partnership which may have an unlimited number of partners (i.e. “ two or more persons”).

The Texas statutory law applicable setting forth the duties and liabilities of within Marriage relationship is found in Family Code Title 1 and 2. For example there is a statutorily imposed “Duty of Support” TX FC Sec. 2.501. This markedly contrasts with the many statutory duties of partners to the partnership. There are no other statutory duties imposed on the marriage relationship such as the fiduciary duty or duty of care, or duty of loyalty.

Of particular note, under Texas law, a spouse does not act as an agent for the other spouse only because of the marriage relationship. (See TX FL Sec. 3.201 (c)) In contrast each partner is statutorily deemed to act as the agent of the partnership. That is to say, a spouse is not legally allowed to act as the agent of the marital estate or the other spouse unless specifically authorized to do so in writing, in direct contrast to a partner in a partnership who is statutorily defined as being a fully empowered legal agent of the partnership with the legal ability to bind all partners to the extent of their ownership interest in the partnership.

Analogous comparisons and contrasts can be made between the other legal entities in the text of 27 CFR 479.11 (i.e. “company”, “association”, “trust”, “corporation” or “estate”) and the State law defining and establishing the marital relationship. State law defines and controls the legal existence, rights and duties and relationships within the listed statutorily created legal entities. State Law defines the marital relationship between two people in a distinctly different manner. Indisputably, State laws treat the martial relationship as

something distinctly separate and different from all other statutorily created legal entities, such as a “company”, “association”, “trust”, “corporation” or “estate”.

Indisputably, any support for the proposed changes to allow for **“Other Legal Entity - a married couple registering jointly”** based on the inference that a “marital relationship” is merely a FORM of “partnership” is logically and legally unsupported and clearly incorrect.

Without changes to the regulatory definition of “person” in 27 CFR 479.11, including “a married couple registering jointly” the proposed changes FORM 1, FORM 4 and FORM 5 lack any regulatory textual basis. Any argument based on similar entity status (say between a statutory “partnership” and a statutory “marital relationship”) is unfounded because state laws treat the marital relationship separately and distinctly from the other listed legal entities. Any change in the definition of “person” to include of “a married couple registering jointly” as an allowed applicant on FORM 1, FORM 4 or FORM 5 would require substantive rule making Notice in compliance with the Administrative Procedures Act, before making the proposed changes to FORM 1, FORM 4 or FORM 5.

7) No regulatory basis for the proposed change to allow “Other Legal Entity - a married couple registering jointly” in the definition of “Responsible Person”:

27 CFR §479.11 unambiguously defines a “Responsible *Person*” as:

“In the case of an unlicensed entity, including any trust, partnership, association, company (including any Limited Liability Company (LLC)), or corporation, any individual who possesses, directly or indirectly, the power or authority to direct the management and policies of the trust or entity to receive, possess, ship, transport, deliver, transfer, or otherwise dispose of a firearm for, or on behalf of, the trust or legal entity. In the case of a trust, those persons with the power or authority to direct the management and policies of the trust include any person who has the capability to exercise such power and possesses, directly or indirectly, the power or authority under any trust instrument, or under State law, to receive, possess, ship, transport, deliver, transfer, or otherwise dispose of a firearm for, or on behalf of, the trust. Examples of who may be considered a responsible person include settlors/grantors, trustees, partners, members, officers, directors, board members, or owners. An example of who may be excluded from this definition of responsible person is the beneficiary of a trust, if the beneficiary does not have the capability to exercise the powers or authorities enumerated in this section.

Nowhere in the extant regulatory definition is there any supporting text or basis for inclusion of “a married couple registering jointly” in the proposed revised definition of “Responsible Person” presented in the proposed FORM 1, FORM 4 or FORM 5.

The regulatory definition of “Responsible Person” only recognizes only entities that are recognized legal incorporeal person status that is distinct and separate from the persons who may have legal power and authority or control over the legal entity as set forth in the regulation. Further the last two sentences of the definition provide examples of people who can and those who cannot be a “Responsible Person”. While a beneficiary of a trust has a legal equitable interest in the trust property, the beneficiary does not qualify as a “Responsible Person” unless he or she can exercise the powers listed in the regulation.

Under Texas law, a spouse does not act as an agent for the other spouse only because of the marriage relationship. (See TX FL Sec. 3.201 (c)) In contrast each partner is statutorily deemed to act as the agent of the partnership. That is to say, a spouse is not legally allowed to act as the agent of the marital estate or the other spouse unless specifically allowed to do so in writing. Thus one spouse is not empowered to execute declarations or certifications on behalf of the other spouse or the martial estate without a written durable power of attorney.

Further under Texas law (a community property state) there exists “special community property” which is defined as community assets subject to one spouse's sole management control and disposition. (see This is directly similar to property held in trust by the Trustees to benefit a trust beneficiary.

Lastly in Texas, a married couple may enter into either a premarital agreement, or marital property agreement or both between the people in a marriage relationship. (See Texas Family Code Sec. 4.001 et seq) This agreement can outline how assets and debts will be handled during the marital relationship, which property will be separate property, and which property will be community property, who has control over which property, and how this property will be divided after the martial relationship. These agreements must be: in writing, signed voluntarily by both spouses, and require full disclosure of assets and liabilities, to be considered valid. The agreement must also be fair and reasonable, and it cannot include provisions for child custody or support.

So at least under Texas law, one spouse in the martial relationship may or may not be an “ individual who possesses, directly or indirectly, the power or authority to direct the management and policies of the trust or entity to receive, possess, ship,

transport, deliver, transfer, or otherwise dispose of a firearm for, or on behalf of, the trust or legal entity.” As seen in the above, the spousal relationship in a Texas marital relationship is more like that of trust agreement in which each spouse may have (but does not necessarily has, the role of a trustee or the role of beneficiary of a trust. In both instance the beneficiary and the spouse may have limited powers over the property held by the respective legal entity. Thus a Texas spouse is more like the trust beneficiary identified in the text of the regulation as an example of a person who may or may not fall within the scope of a “Responsible Person”.

In sum, just because two people are lawfully married under State law, does not mean that each person is empowered to the extent required by the definition of “Responsible Person” found in 27 CFR §479.11. Both State statutes and marital agreements may significantly change the powers of one spouse to manage and control the shared property within the marital relationship. The marital relationship is distinctly different from the legal recognized incorporeal persons or entities recited in the regulatory definition of Responsible Person. Thus without changes in the regulatory definition of Responsible Person, the proposed changes to the definition of “Responsible Person” proposed for FORM 1, FORM 4 and FORM 5 would require substantive rule making Notice in compliance with the Administrative Procedures Act, before making the proposed changes to FORM 1, FORM 4 or FORM 5.