



## National Rifle Association of America

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January 7, 2013

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Chief

Federal Firearms Licensing Center

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Re: Federal Register Notice, November 6, 2012 (page 66633)  
(Application for Federal Firearms License, ATF Form 7 (5310.12),  
OMB Number 1140-0018)

To Whom It May Concern:

On behalf of the National Rifle Association of America, Inc. (NRA), the following comments are offered regarding the above collection of information by the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF).

The statutory authority for ATF Form 7 is found in 18 U.S.C. § 923(a), which provides:

No person shall engage in the business of importing, manufacturing, or dealing in firearms, or importing or manufacturing ammunition, until he has filed an application with and received a license to do so from the Attorney General. The application shall be in such form and *contain only that information necessary to determine eligibility for licensing* as the Attorney General shall by regulation prescribe and shall include a photograph and fingerprints of the applicant. Each applicant shall pay a fee for obtaining such a license, a separate fee being required for each place in which the applicant is to do business . . . (emphasis added).

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Accordingly, ATF Form 7 may request “only that information necessary to determine eligibility for licensing . . . .” The criteria for licensing eligibility are set forth in 18 U.S.C. § 923(d)(1), which provides:

Any application submitted under subsection (a) or (b) of this section shall be approved if —

(A) the applicant is twenty-one years of age or over;

(B) the applicant (including, in the case of a corporation, partnership, or association, any individual possessing, directly or indirectly, the power to direct or cause the direction of the management and policies of the corporation, partnership, or association) is not prohibited from transporting, shipping, or receiving firearms or ammunition in interstate or foreign commerce under section 922(g) and (n) of this chapter;

(C) the applicant has not willfully violated any of the provisions of this chapter or regulations issued thereunder;

(D) the applicant has not willfully failed to disclose any material information required, or has not made any false statement as to any material fact, in connection with his application;

(E) the applicant has in a State

(i) premises from which he conducts business subject to license under this chapter or from which he intends to conduct such business within a reasonable period of time, or

(ii) in the case of a collector, premises from which he conducts his collecting subject to license under this chapter or from which he intends to conduct such collecting within a reasonable period of time;

(F) the applicant certifies that —

(i) the business to be conducted under the license is not prohibited by State or local law in the place where the licensed premise is located;

(ii)(I) within 30 days after the application is approved the business will comply with the requirements of State and local law applicable to the conduct of the business; and

(II) the business will not be conducted under the license until the requirements of State and local law applicable to the business have been met; and

(iii) that the applicant has sent or delivered a form to be prescribed by the Attorney General, to the chief law enforcement officer of the locality in which the premises are located, which indicates that the applicant intends to apply for a Federal firearms license; and

(G) in the case of an application to be licensed as a dealer, the applicant certifies that secure gun storage or safety devices will be available at any place in which firearms are sold under the license to persons who are not licensees (subject to the exception that in any case in which a secure gun storage or safety device is temporarily unavailable because of theft, casualty loss, consumer sales, backorders from a manufacturer, or any other similar reason beyond the control of the licensee, the dealer shall not be considered to be in violation of the requirement under this subparagraph to make available such a device).

To the extent that ATF Form 7 requests information that is not material to the criteria established by subparagraphs (A) - (G), such portions of ATF Form 7 violate the express limitation on ATF's authority and must be removed from the form. See *e.g.*, *FDA v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 161 (2000) ("an administrative agency's power to regulate in the public interest must always be grounded in a valid grant of authority from Congress") and *EME Homer City Generation, L.P. v. E.P.A.*, 696 F.3d 7, 2012 23 (D.C. Cir. 2012) (agency "may not exceed a statute's authorization or violate a statute's limits."). As the D.C. Circuit explained, a federal agency such as the ATF is "a creature of statute. It has no constitutional or common law existence or authority, but only those authorities conferred upon it by Congress. . . . Thus, if there is no statute conferring authority, a federal agency has none. . . ." *Michigan v. E.P.A.*, 268 F.3d 1075, 1081-82 (D.C. Cir. 2001). (holding that the Environmental Protection Agency can not declare a jurisdictional conflict and implement a federal program under the Clean Air Act, when the Clean Air Act specifically provides roles for the states and Native American tribes).

The specific portions of the ATF Form 7 which exceed ATF's authority are the following:

Box 13 ("Hours of Operation Applicant's Business"): As subparagraphs (A) - (G) do not make a licensee's hours of operation a condition of eligibility, such information is not necessary to determine eligibility for licensing.

Box 14 ("Is Applicant Presently Engaged in a Business Requiring a Federal Firearms License?") and Box 14a ("Present Federal Firearms License Number"): As

subparagraphs (A) - (G) do not make issuance of a license dependent upon already having a federal firearms license, or limit the number of licenses a licensee may be issued, such information is not necessary to determine eligibility for licensing.

Box 15 ("If You Have Served in the Armed Forces, Provide the Service Serial Number and Military Branch"): As subparagraphs (A) - (G) do not make issuance of a license dependent upon service in the Armed Forces, or bar issuance of a license for those who have not served in the Armed Forces, such information is not necessary to determine eligibility for licensing.

Box 16 ("Applicant's Business Premises Are Owned Leased/Rented Military" and "Name and Address of Property Owner" and "Telephone Number of Property Owner"): As subparagraphs (A) - (G) do not make issuance of a license dependent upon the ownership status of the property where the licensed premises are located, such information is not necessary to determine eligibility for licensing.

Box 18a ("Do You Intend to Sell Firearms Only at Gun Shows?"): As subparagraphs (A) - (G) do not bar issuance of a license for a licensee who intends to limit his business to sales at gun shows, such information is not necessary to determine eligibility for licensing.

Box 22 ("Home Address" and "Place of Birth" and "Residence Telephone No."): As subparagraphs (A) - (G) do not require information concerning a licensee's home, or his place of birth, such information is not necessary to determine eligibility for licensing.

Box 24 ("Has Applicant or any Person Referred to in Item 22 Above: A. Held a Federal Firearms License? B. Been Denied a Federal Firearms License? C. Been an Officer in a Corporation Holding a Federal Firearms License? D. Been an Employee of a Federal Firearms Licensee? E. Had a Federal Firearms License Revoked?"):

With respect to the "Applicant" (both an individual applying for a license as a sole proprietor or a corporate entity), only Questions A, B, and E may be material for determining eligibility under Subparagraph (C) (whether the applicant has "willfully violated any of the provisions of this chapter or regulations issued thereunder"). With respect to a corporate applicant, Questions C and D are nonsensical.

As to a "responsible person" of a corporate entity, none of the questions are applicable because the only statutory significance of a "responsible person" of a corporate entity relates, under Subparagraph (B), to whether he/she is "prohibited from transporting, shipping, or receiving firearms or ammunition in interstate or foreign commerce under section 922(g) and (n) of this chapter."

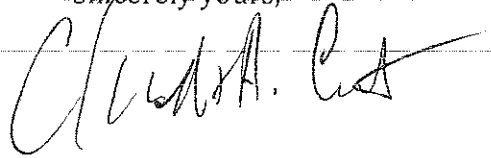
Because Box 24 requests both information that is necessary to determine eligibility for licensing and information which is not necessary to determine eligibility for licensing, Box 24 should be broken up into questions related to individuals applying for a license as a sole proprietor and questions related to corporate applicants, and there should be no questions relating to "responsible persons," other than as to whether he/she is

"prohibited from transporting, shipping, or receiving firearms or ammunition in interstate or foreign commerce under section 922(g) and (n) of this chapter."

Box 25 (relating to the categories of statutorily prohibited persons) should likewise be broken up into questions related to individuals applying for a license as a sole proprietor and questions related to corporate applicants, and, because Subparagraph (B) is concerned with whether a "responsible person" is "prohibited from transporting, shipping, or receiving firearms or ammunition in interstate or foreign commerce under section 922(g) and (n) of this chapter," the questions should be addressed to "responsible persons."

We appreciate the opportunity to provide comment.

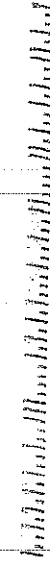
Sincerely yours,

A handwritten signature in black ink, appearing to read "C. A. P." with a stylized flourish at the end.

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