

NATIONAL RIFLE ASSOCIATION OF AMERICA  
INSTITUTE FOR LEGISLATIVE ACTION  
11250 WAPLES MILL ROAD  
FAIRFAX, VIRGINIA 22030



**NRA**

January 22, 2015

Tracy Robertson, Chief  
Federal Firearms Licensing Center  
244 Needy Road  
Martinsburg, WV 25405

Re.: Draft proposed ATF Form 7 (5310.12)/7CR (5310.16), Application for Federal Firearms License, 79 FR 70203 (Nov. 25, 2014).

Dear Chief Robertson,

The National Rifle Association of America offers the following comments on the proposed information collection.

This is a revised version of a draft form last proposed just over two years ago. 77 FR 66633 (Nov. 6, 2012). The previous draft only covered commercial applicants, but still included questions about the identity and background of “responsible persons” under the license. Combining Form 7 and Form 7CR (for collectors of “curios or relics”), and employing a separate “Responsible Person Questionnaire” are new aspects of the current proposal.

On January 7, 2013, the NRA filed extensive comments objecting to the proposed form. (See attached.) The point made throughout the NRA’s comments was that ATF is only authorized to collect “information necessary to determine eligibility for licensing.” 18 U.S.C. § 923(a). The criteria for eligibility are fully described by statute. 18 U.S.C. § 923(d)(1). Any questions demanding information not necessary to apply those statutory criteria are unauthorized and should not be included in the final revised form.

To the extent that questions on the 2014 proposed form repeat those on the 2012 proposed form, the NRA offers the same objections, and our January 7, 2013 comments are incorporated in these comments by reference.

ATF responded to the NRA’s January 7, 2013 comments in a letter dated March 4, 2013, which asserted that because the items objected to “have been on the form for many years and remain unchanged, the comments concerning those items are not within the scope of the Federal Register Notice and will not be addressed.” Yet this is not a basis by which to move forward on the proposed information collection. As the Supreme Court held in *Ohio Pub. Employees Retirement System v. Betts*, 492 U.S. 158, 171 (1989): “Even contemporaneous and longstanding agency interpretations must fall to the extent they conflict with statutory language.” Although the notice asked for comments on “whether the proposed

collection of information is necessary for the proper performance of the functions of the agency,” (77 FR at 66633) it is clear that the collection of information unauthorized by law is inherently not “necessary,” and the repetition of an unauthorized collection does not make it lawful.

With that background in mind, the NRA offers the following comments on the current version of the proposed form.

The form should not combine the applications for both commercial and collectors’ licenses. While we fully appreciate ATF’s desire to reduce the number of forms it must inventory and process, merging these two applications leads to problems of its own. For instance, question 20 (“Applicant Certification”) requires the applicant to certify that the “business/activity” will comply with various state or local laws. But the relevant statutory provisions only refer to “business,” suggesting that business-related questions should not apply to applicants who are not engaged in a business. 18 U.S.C. § 923(d)(1)(E)-(F).

Question 5 should ask for the name of the “County or City” in which the business or activity is located. This is necessary to allow for accurate answers by applicants located in independent cities—mainly in Virginia, but also in Baltimore, Md.; Carson City, Nev.; and St. Louis, Mo.

Question 12 (Hours of Operation) is unauthorized by statute. See 2013 comments on Box 13.

Question 13 (“Was the business obtained from someone else?”) is unauthorized by statute. The purpose of the application is to determine whether the current applicant is eligible for a license. The previous ownership of the business is not part of the statutory criteria.

Question 15 (ownership or leasing of premises) is unauthorized by statute. See 2013 comments on Box 16.

Question 16 (“Do you intend to sell firearms at Gun Shows?”) is unauthorized by statute. The Gun Control Act expressly authorizes licensees to engage in firearms business at gun shows. 18 U.S.C. 923(j). An applicant’s intention to sell firearms at gun shows has no bearing on the applicant’s eligibility for a license. Further, since licensees conducting business at shows must keep exactly the same records and comply with the same background check requirements as they do when making sales at their licensed premises, and since those records would remain subject to ATF inspection at the licensed premises, no policy reason supports this inquiry.

Even if the purpose of the question is to allow ATF to make further inquiries about whether an applicant intends to sell firearms *only* at gun shows, the question is inappropriate. As noted in our 2013 comments on Box 18a, no statute or regulation prohibits an FFL from doing business only at gun shows. (However, the current proposed question is an improvement over question 18a on the current form, which advises applicants not even to submit the application if they intend to sell firearms only at shows.)

An applicant must have “premises from which he *conducts* business subject to license under [the GCA].” 18 U.S.C. § 923(d)(1)(E). That is not the same as the statutory term of art “*engaged* in the business,” which includes manufacturing, importing, and dealing in firearms. 18 U.S.C. § 923(a)(21). For dealers, the term “engaged in the business” includes “the

repetitive purchase and resale of firearms,” *id.*, but there is no requirement that both activities occur at the licensed premises, or at any location where business can be conducted. (If there were, it would be illegal for a dealer to “conduct business” at a gun show if he only sold firearms at the show without also buying firearms there.)

There are any number of legitimate reasons a licensee might want to sell firearms exclusively at shows:

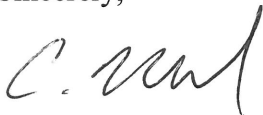
- A licensee might engage only in gunsmithing at his licensed premises, but occasionally sell guns on consignment at shows. Or, he might sell firearms that were not claimed or paid for by gunsmithing clients.
- A manufacturer or importer might conduct only manufacturing or importing activities at a licensed premises, but sell its products to the public only at shows—maybe to avoid the hassles and risks of shipping firearms, or just to enjoy the full retail markup without opening its factory doors to the public.

Question 21 (“Certification”) demands unauthorized release of information. The question requires the applicant to authorize release of military records, medical records, and police and criminal records, without exception. This intrusive inquiry is not authorized by law. The only statutory requirement is to ensure that the applicant “is not prohibited from transporting, shipping, or receiving firearms or ammunition in interstate or foreign commerce under section 922(g) or (n) of [Title 18].” 18 U.S.C. All of the records that are necessary to make that inquiry are public records, for which no release by the applicant is necessary. Those records are (or should be) available through the National Instant Criminal Background Check System. *See* 28 C.F.R. § 25.6(j). The certification (and the corresponding instruction 3 on page 3 of the form) should be revised to authorize only a NICS check, or at most a check of public records.

The “Privacy Act Information” (page 4) misstates the proper scope of ATF’s inquiry. Only one “purpose” listed is expressly authorized by law: determining whether the applicant is eligible for licensing. The “type of firearms and ammunition to be dealt in” is relevant only in determining the type of license the applicant must apply for. The ownership of the business, business hours, and “business history” have no bearing on the applicant’s eligibility.

We appreciate your attention to these comments. Please do not hesitate to contact us if you have any questions.

Sincerely,



Christopher L. Zealand

Director  
Research and Information



**National Rifle Association of America**

INSTITUTE FOR LEGISLATIVE ACTION

11250 WAPLES MILL ROAD

FAIRFAX, VIRGINIA 22030-7400

(703) 267-1160

Fax: (703) 267-1164

Office of Legislative Counsel

Christopher A. Conte

January 7, 2013

Tracey Robertson

Chief

Federal Firearms Licensing Center

244 Needy Road

Martinsburg, WV 25405

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).

Federal Firearms

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Licensing Center



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."

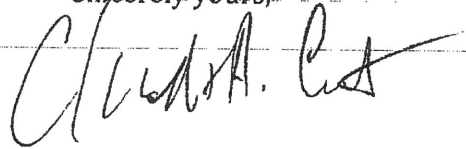
Because Box 24 requests both information that is necessary to determine eligibility for licensing and information which is not necessary to determine eligibility for licensing, Box 24 should be broken up into questions related to individuals applying for a license as a sole proprietor and questions related 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.



U.S. Department of Justice

Bureau of Alcohol, Tobacco,  
Firearms and Explosives

**MAR 04 2013**

Martinsburg, West Virginia 25405

[www.atf.gov](http://www.atf.gov)

National Rifle Association of America  
Institute for Legislative Action  
Christopher A. Conte  
11250 Waples Mill Road  
Fairfax, Virginia 22030-7400

Dear Mr. Conte:

This is in response to your letter received on January 9<sup>th</sup> to the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) regarding the information collection of information under OMB Number 1140-0018. The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) submitted the information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies.

The NRA asserts that the ATF Form 7 may request only that information necessary to determine eligibility for licensing under 18 USC § 923(d)(1)(A) through 18 USC § 923(d)(1) (G). The NRA further asserts that to the extent that the ATF Form 7 requests information that is outside of the requirement of 18 USC § 923(d)(1)(A) through 18 USC § 923(d)(1) (G), such portions of ATF Form 7 violate the express limitation on ATF's authority and must be removed from the form. The NRA identifies several sections of the ATF Form 7 which it states exceed ATF's authority.

With regard to the comments concerning sections 13, 14, 15, 16, 18a, 22, 24 and 25 on ATF Form 7, those items have been on the form for many years and remain unchanged. For this reason, the comments concerning those items are not within the scope of the Federal Register Notice and will not be addressed.

We trust that the foregoing has been responsive to your request. Please feel free to contact the Firearms and Explosives Services Division at 304-616-4590 if you have any additional questions.

Sincerely yours,

Stephen B. Albro  
Chief, Firearms and Explosives Services Division