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October 24, 2016

By E-mail to

Tracey.robertson@atf.gov

Ms. Tracey Robertson
Chief
Federal Firearms Licensing Center
244 Needy Road
Martinsburg, WV 25405

Re: Comments of Gun Owners of America, Inc. and Gun Owners Foundation on Bureau of Alcohol, Tobacco, Firearms, and Explosives Notice of Revisions to the ATF Form 7 — 81 Fed. Reg. 57616 (August 23, 2016)

Dear Ms. Robertson:

These comments are filed on behalf of our clients, Gun Owners of America, Inc. (“GOA”) and Gun Owners Foundation (“GOF”). GOA is a national membership educational and lobbying social welfare organization, devoted to protecting and defending firearms rights across the country. GOA was incorporated in California in 1976 and is exempt from federal income tax under section 501(c)(4) of the Internal Revenue Code (“IRC”). GOF is a nonprofit, educational, and legal defense organization, defending the Second Amendment to the United States Constitution and encouraging compliance with the rule of law in the administration of federal and state firearm regulations. Incorporated in Virginia in 1983, GOF is exempt from federal income tax under IRC Section 501(c)(3). GOA and GOF are headquartered in northern Virginia.

In response to the above-referenced August 23, 2016 request¹ by the Bureau of Alcohol, Tobacco, Firearms, and Explosives (“ATF”), GOA and GOF submit these comments on ATF’s revisions to the “Application for Federal Firearms License,” known as Form 7.

¹

<https://www.gpo.gov/fdsys/pkg/FR-2016-08-23/pdf/2016-20051.pdf>

COMMENTS

A. The Proposed Form 7 is Confusing and, If Adopted, Should At Least Make Clear Which Sections are Inapplicable to Collectors.

In general, GOA & GOF believe it is a bad idea to combine the Form 7 with the Form 7 CR. Form 7 licenses for dealers, importers, and manufacturers pertain to businesses, and are nothing like Form 7 licenses for private hobby collectors. For this reason, the combined form is overly complicated and confusing as to which requirements apply to which applicants. For example:

- Just after Item 40 on the proposed new form the applicant is instructed to attach a photograph and fingerprint cards. However, that requirement applies only to dealers, manufacturers, and importers. C&R licensees have never been required to submit these items. Nevertheless, the form seems to require them for C&R licensees. It is only on the fine print Instructions on page 5 where it is explained this is not required for Type 03 licenses. That should be made clear on the Form itself, not just in the instructions.
- Likewise, Item #9 “Describe the specific activity...” should state that it does not apply to Type 03 applicants. It is fairly obvious that applicants for a curio and relic collector license intend to be collectors of curio and relics.
- It should be made clear that Item #12, “Hours of Operation” does not apply to Type 03 applicants. C&R licensees are not a business, and thus should not be required to provide hours operation during which ATF may contact them.
- It should be made clear that Part B entitled “Responsible Person Questionnaire” does not apply to C&R applicants. Collectors who obtain a license as a private individual, do not run a business, and do not have employees. Their license does not grant anyone but them permission to engage in any activity. Collectors do not have additional “responsible persons” they would need to list on the application.

B. The Proposed New Form 7 Eliminates Guidance As to Who Needs to Apply and Obtain a FFL.

Federal law is very specific as to what it means for a person to be “engaged in the business” of dealing in firearms and thus required to obtain a federal firearms license. 18 U.S.C. Section 921(a)(21). Likewise, the law is very specific as to who is **not** considered to be engaged in the business and who **does not** need to obtain a FFL.

Consistent with that complex definition, the current Form 7 attempts to help people understand whether their activities require them to obtain a FFL. Thus, the current Form 7 Question #18 asks “Do you intend to make a profit from your business? If no, do not submit application.” That question has been removed on the proposed new Form 7. Without this question, a person might be led to believe that, even if he is not engaged in business “with the principal objective of livelihood and profit,” he nevertheless must obtain a license.

Next, the current Form 7 Question #18a asks “Do you intend to sell firearms **only** at gun shows? If no, do not submit application.” That has now been amended to be Question 16, which asks only “Do you intend to sell firearms at gun shows and/or conduct internet sales?” The part about selling “only” at gun shows and the part about not needing to submit an application have been eliminated. There is no reason to make any change here, because the change serves no useful purpose except, perhaps, to mislead persons who do not need to apply, to apply.

Finally, the current Form 7 Question #19 asks “Do you intend to use your license **only** to acquire personal firearms? If yes, do not submit application.” That now is Question 17 and asks “Do you intend to use your license **ONLY** to acquire firearms or to enhance your personal collection?” However, there is no instruction on the proposed form “do not submit application” if the applicant answers “yes.” This might lead a person to think that he is required to obtain a FFL even if he is buying and selling to enhance a personal collection. Of course, ATF will not even allow a person apply for an FFL if he is going to use it only to purchase personal firearms. So why not let him know that before he checks “yes” and submits the application?

Without these questions on the Form 7 in its current form, GOA & GOF believe the form is confusing to persons trying to understand whether they are required to apply for and obtain a FFL. By discouraging some persons who might otherwise engage in activity that does not require an FFL, but who do not want to take the time, expense, and hassle to obtain one, ATF could suppress legitimate Second Amendment activity. For example, a person might be led to believe that he is required to obtain a FFL before he can make a private sale of a firearm at a gun show, when that is not the case.

For these reasons, the current Questions 18, 18a, and 19 on the current Form 7 should be carried over in their present form to the new proposed form.

C. The Definition of “Fugitive from Justice” Is Incorrect and Nonsensical.

The proposed new Form 7 would add a definition #11 of “Fugitive from Justice.” Although 18 U.S.C. Section 921(a)(15) defines the term as “any person who has fled from any State to avoid prosecution for a crime or to avoid giving testimony in any criminal proceeding,” ATF purports to redefine it, adding an additional sentence: “[t]he term also includes any person who knows that misdemeanor or felony charges are pending against such

person and who leaves the State of prosecution.” This may be consistent with ATF’s regulatory definition in 27 C.F.R. Section 478.11, but both of ATF’s definitions are inconsistent with the statute. Moreover, the statutory meaning of the term “fugitive from justice” in the Gun Control Act of 1968 is obviously critical, since that Act is the law that prohibits possession, receipt, etc. of firearms. *See* 18 U.S.C. § 922(g)(2).

ATF’s proposed definition would expand the definition of “fugitive from justice” to include a person who — irrespective of motive — simply crosses a State line (including from Bristol, VA to Bristol, TN) knowing that misdemeanor or felony charges are pending against him. That is a clear distortion of the statutory definition set forth in 18 U.S.C. Section 921(a)(15), and erroneous as a matter of law. Not all persons who have charges pending against them are required to remain within a particular state, whether as a condition of bond, or otherwise. ATF’s senseless, overbearing definition would apply to a person who lives in Nebraska, is charged with reckless driving across the border in Kansas, and returns to his home in Nebraska while he awaits his court date. Even though neither the prosecutor nor the court would have the slightest concern with such travel, and even though he fully intends to return for his court date, according to ATF he would be transformed into a “fugitive from justice,” and be prohibited from purchasing a firearm. That is contrary to the statute, and ATF should amend its definition to comport with the statute.

Conclusion

In another scenario, paperwork reduction might make sense. However in this case it does not. The proposed new Form 7 makes it appear as if certain questions are required in order to obtain a license that are in fact not required of collectors. The proposed new Form 7 would overcomplicate the process for obtaining a C&R license. And the proposed Form 7 is less helpful than the current form in helping people determine whether they are, in fact, required to obtain a FFL, and thus risks suppressing legitimate Second Amendment activity that is not subject to federal licensure. Collectors are an entirely different thing than manufacturers, importers and dealers. Trying to combine both categories onto a single form seems to be unhelpful and ATF should fully consider whether its proposed changes are really making things better, instead of worse.

Sincerely yours,

/s/

William J. Olson

WJO/lis