

Consider Buying a Silencer or NFA Title II Firearm Before the Law Changes.

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ATF-41F becomes effective on July 13, 2016 and there are changes being made to the laws involving the purchase or transfer of NFA Title II firearms.

What is ATF-41F (formerly ATF-41P)?

On, January 4, 2016 the Attorney General signed final rule 41F which was subsequently published on January 15, 2016 in the Federal Register. Rule 41F amends the regulations the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) employs regarding the making or transferring under the National Firearms Act (NFA) and the new rule will go into effect on July 13, 2016. The purpose of the amended rule is to ensure the identification and background check requirements apply equally to individuals and legal entities seeking to purchase or transfer NFA restricted items. There is some ambiguity with the way the rule is written and its interpretations by the ATF that must still be resolved as they work to implement the rule by the July 13th deadline. Regardless, the final rule, as it currently stands, requires “responsible persons” of trusts or legal entities to complete a new form (Form 5320.23), submit a passport photo, two FBI fingerprint cards (Form FD-258) and undergo a background check thorough NICS (National Instant Criminal Background Check System) for every responsible person. The Department of Justice (DOJ) has clarified the term “responsible person” for a trust or legal entity to include those persons with power and authority to direct the management and policies of the trust or legal entity to receive, possess, ship, transport, deliver, transfer, or otherwise dispose of a firearm for, or on behalf of, the trust or entity. In short, everyone on the trust with the exception of the beneficiary will be subject to the fingerprinting, photo and NICS requirement.

The amended rule further requires a copy of all applications be forwarded to the Chief Law Enforcement Officer (CLEO) of the locality in which an applicant, transferee or responsible person resides. CLEO certification is no longer required on any form. This change includes new individual applicants and is merely intended as a notice requirement. All of the new requirements are in addition to the submission of Form 1 (Application to Make and Register a Firearm, also known as 5320.1) or Form 4 (Application for Tax Paid Transfer and Registration of Firearm, also known as Form 5320.4).

Lastly, the rule addresses a few estate planning matters when there are firearms registered to a decedent. The person designated under state law or identified as an executor, personal representative of an estate may possess the firearms registered to the decedent during the probate process without the possession being treated as a transfer. At the close of probate, the firearm may be transferred to the beneficiaries of an estate as a tax exempt transfer, by way of ATF Form 5 (also known as 5320.5), however, transfers to non-lawful heirs will be subject to the transfer tax.

How will the changes affect me?

If you already have an NFA Trust, as of now, you do not have to be concerned about the changes, unless you purchase or transfer NFA items on or after July 13, 2016. If you currently have a trust and purchase NFA restricted items after July 13, 2016 you and all of your co-trustees will be subject to the new requirements.

Despite the changes in the law, an NFA Trust is still the best vehicle to use when purchasing NFA Title II items and still the ideal way to allow multiple parties to have access to restricted items. Our attorneys at the Beckmen Law Firm are ready to answer any questions you may have. Please contact us at (817) 756-1094 to ensure that you are ready for July 13, 2016 and that our attorneys have enough time to draft or amend your NFA Firearms Trust before the imminent deadline of ATF-41F.