GUN OWNERS OF AMERICA

February 11, 2011

Office of Management and Budget
Office of Information and Regulation Affairs
Attn: Department of Justice Desk Office
Washington, D.C. 20503

**Re: December 17, 2010 "Notice of Information Collection Under Review: Report of Multiple Sale or Other Disposition of Certain Rifles"**

To Whom It May Concern:

I am writing on behalf of Gun Owners of America, an organization of law-abiding gun owners with over 300,000 members.

You have sought comments on a proposed requirement that federal firearms licensees report multiple sales or other dispositions of firearms if the licensee sells or disposes of two or more rifles within five consecutive business days and the firearms have all of the following characteristics: they are (1) semi-automatic, (2) a caliber greater than .22, and (3) capable of accepting a detachable magazine.

Although it is not clear what the Bureau intends to do with the information reported to it pursuant to this requirement, it is absolutely clear that the requirement makes no sense from the Bureau's standpoint unless the information is retained, computerized, and shared with law enforcement personnel -- all characteristics of an unlawful gun registration system.

I would therefore suggest the following:

**THE PROPOSED REGULATORY ACTION IS ILLEGAL**

The McClure-Volkmer Firearms Owners Protection Act of 1986, in particular, and the provisions of Chapter 44, in general, explicitly prohibit the establishment of a national gun registry.

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18 U.S.C. 923(g) is the subsection which not only defines, but also imposes strict limits on the government's ability to require recordkeeping and to inspect records.

18 U.S.C. 923(g)(1)(A) states: "Such importers, manufacturers, and dealers shall not be required to submit to the [AG] reports and information with respect to such records and the contents thereof, except as expressly required by this section." Suffice it to say that multiple sales reports are not "expressly required by [section 923]."

18 U.S.C. 923(g)(1)(A) goes on to provide that access to licensee records can, except as otherwise provided, be achieved only upon "reasonable cause" to believe that there has been a violation of Chapter 44 and only by obtaining a warrant from a federal magistrate.

Absent that warrant, access to licensee records (or information contained on those records) can be had only in the course of a criminal investigation [18 U.S.C. 923(g)(1)(B)(i), (g)(1)(B)(ii)(II), (g)(1)(B)(ii)(III), (g)(1)(C)(ii), and (g)(7)] or in connection with an annual compliance inspection [923(g)(1)(B)(ii) and (C)(i)]. These McClure-Volkmer limitations trump any preexisting language which they contradict.

Section 923 specifically prohibits the Bureau from seizing records in connection with a routine compliance inspection, unless they are material evidence to a violation of law. And 923(g)(3)(B) requires state law enforcement officials to destroy records which come within their possession.

Section 923(g)(3)(A) allows an exception to these rules for multiple sales of handguns and pistols -- but nothing else.

BATFE now claims that the provisions of 923 and McClure-Volkmer are largely nugatory because, it claims, 18 U.S.C. 923(g)(5)(A) allows it to demand any broad swath of gun-related record information which it chooses.

The first answer to this is that the legislative history of (5)(A) makes it clear that the section was only intended to apply to specific particularized information about a specific investigation. Harold Serr of the Alcohol and Tobacco Tax Division wrote, on December 17, 1968, that his division did not "intend to require licensed firearms dealers to submit all records of firearms transactions to a central location [because this would be] in effect gun registration and the Congress clearly showed its desires in this area...." Serr categorized the (5)(A) requirement as applying "when we become aware of violations of the law by an unscrupulous dealer."

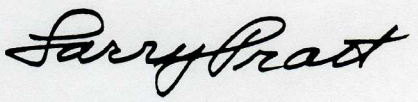
The second answer is that, whatever ambiguity may have existed in (5)(A), that ambiguity was clarified by McClure-Volkmer's amendments to section 923, which limited the Bureau's access to information to criminal investigations and an annual compliance inspection. In particular, McClure-Volkmer's limitation of reports to those "***expressly*** required by this section" overrides any interpretation that the Bureau can make up reporting requirements using (5)(A) as a justification. [Emphasis added.]

I needn't point out that McClure-Volkmer, because it was later in time, trumps any provisions in the 1968 Act which are inconsistent with it. And I would add that the man who advised Senator James McClure on the passage of McClure-Volkmer and who produced the final version of the bill, as it was introduced at the beginning of 1985, is a consultant with our organization.

The third answer is that, if (5)(A) means what the Bureau says it means, subparagraph (3)(A) would have been unnecessary.

If, in fact, the Bureau's interpretation of (5)(A) were correct, there would be nothing to prevent the Bureau from demanding all information with respect to all firearms. Because Chapter 44 prohibits the establishment of a system of gun registration, this is clearly not a permissible legal view.

Sincerely,



Larry Pratt
Executive Director