

From: Hoover, William J. (ATF)
To: Burton, Faith (SMO); [REDACTED] **ATF**
CC: Weich, Ron (SMO); Axelrod, Matthew (ODAG)
Sent: 6/14/2011 4:49:11 PM
Subject: RE: 26 C.F.R. 16.26

Faith,

[REDACTED] **DP**

These letters were prepared in consultation with Matt.

Sent with Good (www.good.com)

-----Original Message-----

From: Burton, Faith (SMO) [mailto:Faith.Burton@usdoj.gov]
Sent: Tuesday, June 14, 2011 04:28 PM Eastern Standard Time
To: [REDACTED] **ATF**; Hoover, William J.
Cc: Weich, Ron (SMO) (JMD); Axelrod, Matthew (ODAG) (JMD)
Subject: FW: 26 C.F.R. 16.26

Please see below -

[REDACTED] **DP**

[REDACTED] **DP**

From: Foster, Jason (Judiciary-Rep)
Sent: Tuesday, June 14, 2011 4:07 PM
To: gary.grindler@usdoj.gov
Cc: Castor, Stephen (Stephen.Castor@mail.house.gov); Davis, Kolan (Judiciary-Rep)
Subject: 26 C.F.R. 16.26
Importance: High

Gary,

I just learned that the ATF Chief Counsel, [REDACTED] **ATF** sent a letter to Agent [REDACTED] **ATF** counsel today citing alleged restrictions on his ability to testify tomorrow pursuant to 26 C.F.R. 16.26. Mr. Orlow has made this claim to witnesses in this investigation before.

However, as I explained to ATF Deputy Director Billy Hoover at around 3:18 pm on May 6, these regulations are explicitly not applicable to a Congressional subpoena. This is not merely a Legislative Branch position. It is explicitly stated by the Executive Branch itself in the attached Federal Register notice.

Mr. Hoover represented to me that he would make sure that [REDACTED] **ATF** was made aware of his error.

I hope you can understand why we would be seriously concerned about the appearance of intimidation and bad faith caused by an ATF lawyer citing a regulation that he *knows* does not apply in an attempt to limit the scope of a witness's testimony before Congress.

I have also attached for your reference [REDACTED] **ATF** letter and the reply from Agent [REDACTED] **ATF** counsel.

Cordially,

Jason A. Foster

Chief Investigative Counsel

Charles E. Grassley, Ranking Member

Committee on the Judiciary

152 Dirksen Senate Office Building

United States Senate

Direct: (202) 224-7142