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DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms, and Explosives

27 CFR Part 478

[Docket No. ATF 32P; AG Order No. 3321-2012]

RIN 1140-AA38

Federal Firearms License Proceedings – Hearings (2008R-15P)

AGENCY: Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF), Department of Justice.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department of Justice is proposing to amend the regulations of the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) regarding administrative hearings held as part of firearms license proceedings. This proposed rule clarifies that such hearings are held in an informal setting and that persons requesting a hearing will be afforded the opportunity to submit facts, arguments, offers of settlement, or proposals of adjustment for review and consideration. The proposed regulations are intended to ensure that federal firearms licensees and persons applying for a federal firearms license are familiar with the hearing process relative to the denial, suspension, or revocation of a firearms license, or imposition of a civil fine.

DATES: Written comments must be postmarked and electronic comments must be submitted on or before [Insert date 90 days after date of publication in the FEDERAL REGISTER]. Commenters should be aware that the electronic Federal Docket Management System will not accept comments after Midnight Eastern Time on the last day of the comment period.

ADDRESSES: Send comments to any of the following addresses—

- Deborah G. Szczenski, Industry Operations Specialist (Regulations), Mailstop 6N-602, Enforcement Programs and Services, Bureau of Alcohol, Tobacco, Firearms, and Explosives, 99 New York Avenue, NE., Washington, DC 20226; *ATTN: ATF 32P*.

Written comments must appear in a minimum 12-point size of type (.17 inches), include your mailing address, be signed, and may be of any length.

- 202-648-9741 (facsimile).
- *http://www.regulations.gov*. Federal eRulemaking portal; follow the instructions for submitting comments.

You may also view an electronic version of this proposed rule at the *http://www.regulations.gov* site.

See the Public Participation section at the end of the **SUPPLEMENTARY INFORMATION** section for instructions and requirements for submitting comments, and for information on how to request a public hearing.

FOR FURTHER INFORMATION CONTACT: Deborah G. Szczenski, Enforcement Programs and Services, Bureau of Alcohol, Tobacco, Firearms, and Explosives, U.S.

Department of Justice, 99 New York Avenue, NE., Washington, DC 20226; telephone: (202) 648-7087.

SUPPLEMENTARY INFORMATION:

I. Background

The Attorney General is responsible for enforcing the provisions of the Gun Control Act of 1968 (“the Act”), 18 U.S.C. Chapter 44. He has delegated that responsibility to the Director of ATF, subject to the direction of the Attorney General and the Deputy Attorney General. 28 CFR 0.130(a). ATF has promulgated regulations that implement the provisions of the Act in 27 CFR Part 478.

The regulations in Subpart E of Part 478, sections 478.71–478.78, relate to proceedings involving federal firearms licenses, including the denial, suspension, or revocation of a license, or the imposition of a civil fine. In particular, § 478.71 provides that the Director of ATF may issue a notice of denial on ATF Form 4498 (Notice of Denial of Application for License) to an applicant for a license if he has reason to believe that the applicant is not qualified, under the provisions of § 478.47, to receive a license. The notice sets forth the matters of fact and law relied upon in determining that the application should be denied, and affords the applicant 15 days from the date of receipt of the notice in which to request a hearing to review the denial. If a request for a hearing is not filed within such time, the application is disapproved and a copy, so marked, is returned to the applicant.

Under § 478.72, an applicant who has been denied an original or renewal license may file a request with the Director of Industry Operations (DIO) for a hearing to review the denial of the application. On conclusion of the hearing and after consideration of all

relevant facts and circumstances presented by the applicant or his representative, the Director (or his or her delegate) renders a decision confirming or reversing the denial of the application. If the decision is that the denial should stand, a certified copy of the Director's findings and conclusions are furnished to the applicant with a final notice of denial, ATF Form 4501 (now ATF Form 5300.13), Final Notice of Denial of Application or Revocation of Firearms License. In addition, a copy of the application, marked "Disapproved," is furnished to the applicant. If the decision is that the license applied for should be issued, the applicant will be so notified, in writing, and the license will be issued.

Section 478.73 provides that whenever the Director has reason to believe that a firearms licensee has willfully violated any provision of the Act or part 478, a notice of revocation of the license (ATF Form 4500) may be issued. In addition, a notice of revocation, suspension, or imposition of a civil fine may be issued on ATF Form 4500 whenever the Director has reason to believe that a licensee has knowingly transferred a firearm to an unlicensed person and knowingly failed to comply with the requirements of 18 U.S.C. 922(t)(1), relating to a NICS (National Instant Criminal Background Check System) background check. Additionally, under 18 U.S.C. 924(p)(1)(A) and 922 (z), a notice of suspension or revocation of a license, or the imposition of a civil penalty, may be issued when a licensee sells, delivers, or transfers any handgun to any unlicensed person without providing a secure gun storage or safety device for the handgun..

As specified in § 478.74, a licensee who receives a notice of license suspension or revocation of a license, or imposition of a civil fine, may file a request for a hearing with the Director of Industry Operations. On conclusion of the hearing and after consideration

of all the relevant information presented at the hearing, the Director renders a decision and prepares a brief summary of the findings and conclusions on which the decision was based. If the decision is that the license should be revoked or, in actions under 18 U.S.C. 922(t)(5) (or 924(p)), that the license should be revoked or suspended, or that a civil fine should be imposed, a certified copy of the summary is furnished to the licensee with the final notice of revocation, suspension, or imposition of a civil fine on ATF Form 4501. If the decision is that the license should not be revoked, or in actions under 18 U.S.C. 922(t)(5) (or 924(p)), that the license should not be revoked or suspended, and a civil fine should not be imposed, the licensee will be notified in writing.

Under § 478.76, a firearms licensee or an applicant for a firearms license may be represented at a hearing by an attorney, certified public accountant, or other person recognized to practice before ATF, provided certain requirements are met. The Director may be represented in hearing proceedings by an attorney in the Office of Chief Counsel or authorized Division Counsel. Pursuant to § 478.77, hearings concerning notification of license denials, suspensions, revocations, or the imposition of a civil fine must be held in a location convenient to the aggrieved party.

Currently, ATF has procedures regarding administrative hearings held as part of firearms license proceedings (see ATF 36N, 75 FR 48362, Aug. 10, 2010).

II. Proposed Rule—Clarification of Hearing Proceedings

As indicated above, the regulations provide certain information regarding hearings relative to firearms license proceedings, e.g., who can request a hearing, where the hearing is held, and that the person requesting a hearing is entitled to representation. ATF believes that other aspects of the hearing process should be clarified in the

regulations. For example, hearings are informal in nature and adherence to civil court rules and procedures is not required. In addition, persons who request a hearing have an opportunity at that time for the submission and consideration of facts, arguments, offers of settlement, or proposals of adjustment. These provisions are being incorporated into the proposed regulations.

The proposed regulations are intended to ensure that federal firearms licensees and applicants for a federal firearms license are familiar with the hearing process relative to the denial, suspension, or revocation of a firearms license, or imposition of a civil fine.

How This Document Complies With the Federal Administrative Requirements for Rulemaking

A. Executive Order 12866

This proposed rule has been drafted and reviewed in accordance with Executive Order 12866, “Regulatory Planning and Review,” section 1(b), Principles of Regulation. The Department of Justice has determined that this proposed rule is a “significant regulatory action” under Executive Order 12866, section 3(f), Regulatory Planning and Review, and accordingly this proposed rule has been reviewed by the Office of Management and Budget. However, this proposed rule will not have an annual effect on the economy of \$100 million, nor will it adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities. Accordingly, this proposed rule is not an “economically significant” rulemaking as defined by Executive Order 12866.

The proposed amendments merely clarify that an administrative hearing, pursuant to a firearms license proceeding, is held in an informal setting where a federal firearms licensee or an applicant for a federal firearms license will have the opportunity for the submission and consideration of facts, arguments, offers of settlement or proposals of adjustment for review and consideration by the Director of ATF.

B. Executive Order 13132

This proposed regulation will not have substantial direct effects on the States, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, the Attorney General has determined that this proposed regulation will not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

C. Executive Order 12988

This proposed regulation meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988.

D. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 605(b)) requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. The Attorney General has reviewed this proposed rule and, by approving it, certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities.

The proposed amendments merely clarify that an administrative hearing, pursuant to a firearms license proceeding, is held in an informal setting where a federal firearms licensee or an applicant for a federal firearms license will have the opportunity for the submission and consideration of facts, arguments, offers of settlement, or proposals of adjustment for consideration by the Director of ATF.

E. Small Business Regulatory Enforcement Fairness Act of 1996

This proposed rule is not a major rule as defined by section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 804. This proposed rule will not result in an annual effect on the economy of \$100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

F. Unfunded Mandates Reform Act of 1995

This proposed rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector of \$100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

G. Paperwork Reduction Act

This proposed rule does not impose any new reporting or recordkeeping requirements under the Paperwork Reduction Act.

Public Participation

A. Comments Sought

ATF is requesting comments on the proposed rule from all interested persons. ATF is also specifically requesting comments on the clarity of this proposed rule and how it may be made easier to understand.

All comments must reference this document docket number (ATF 32P), be legible, and include your name and mailing address. ATF will treat all comments as originals and will not acknowledge receipt of comments.

Comments received on or before the closing date will be carefully considered. Comments received after that date will be given the same consideration if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before the closing date.

B. Confidentiality

Comments, whether submitted electronically or on paper, will be made available for public viewing at ATF, and on the Internet as part of the eRulemaking initiative, and are subject to the Freedom of Information Act. Commenters who do not want their name or other personal identifying information posted on the Internet should submit their comment by mail or facsimile, along with a separate cover sheet that contains their personal identifying information. Both the cover sheet and comment must reference this docket number. Information contained in the cover sheet will not be posted on the Internet. Any personal identifying information that appears within the comment will be posted on the Internet and will not be redacted by ATF.

Any material that the commenter considers to be inappropriate for disclosure to the public should not be included in the comment. Any person submitting a comment shall specifically designate that portion (if any) of his comments that contains material that is

confidential under law (e.g., trade secrets, processes, etc.). Any portion of a comment that is confidential under law shall be set forth on pages separate from the balance of the comment and shall be prominently marked “confidential” at the top of each page. Confidential information will be included in the rulemaking record but will not be disclosed to the public. Any comments containing material that is not confidential under law may be disclosed to the public. In any event, the name of the person submitting a comment is not exempt from disclosure.

C. Submitting Comments

Comments may be submitted in any of three ways:

- *Mail:* Send written comments to the address listed in the **ADDRESSES** section of this document. Written comments must appear in a minimum 12-point size of type (.17 inches), include your mailing address, be signed, and may be of any length.

- *Facsimile:* You may submit comments by facsimile transmission to (202) 648-9741. Faxed comments must:

- (1) Be legible and appear in a minimum 12-point size of type (.17 inches);
- (2) Be on 8½” x 11” paper;
- (3) Contain a legible, written signature; and

- (4) Be no more than five pages long. ATF will not accept faxed comments that exceed five pages.

- *Federal eRulemaking Portal:* To submit comments to ATF via the Federal eRulemaking portal, visit <http://www.regulations.gov> and follow the instructions for submitting comments.

D. Request for hearing

Any interested person who desires an opportunity to comment orally at a public hearing should submit his or her request, in writing, to the Director of ATF within the 90-day comment period. The Director, however, reserves the right to determine, in light of all circumstances, whether a public hearing is necessary.

Disclosure

Copies of this proposed rule and the comments received will be available for public inspection by appointment during normal business hours at: ATF Reading Room, Room 1E-062, 99 New York Avenue, NE., Washington, DC 20226; telephone: (202) 648-8740.

Drafting Information

The author of this document is Deborah G. Szczenski; Enforcement Programs and Services; Bureau of Alcohol, Tobacco, Firearms, and Explosives.

List of Subjects in 27 CFR Part 478

Administrative practice and procedure, Arms and ammunition, Authority delegations, Customs duties and inspection, Domestic violence, Exports, Imports, Law enforcement personnel, Military personnel, Nonimmigrant aliens, Penalties, Reporting and recordkeeping requirements, Research, Seizures and forfeitures, and Transportation.

Authority and Issuance

Accordingly, for the reasons discussed in the preamble, 27 CFR Part 478 is proposed to be amended as follows:

PART 478 – COMMERCE IN FIREARMS AND AMMUNITION

1. The authority citation for 27 CFR Part 478 continues to read as follows:

Authority: 5 U.S.C. 552(a); 18 U.S.C. 847, 921-930; 44 U.S.C. 3504(h).

2. Section 478.72 is amended by adding a new fifth sentence to read as follows:

§ 478.72 Hearing after application denial.

* * * The hearing shall be informal and the applicant will have the opportunity to submit facts, arguments, offers of settlement, or proposals of adjustment for review and consideration. * * *

3. Section 478.74 is amended by adding a new fourth sentence to read as follows:

§ 478.74 Request for hearing after notice of suspension, revocation, or imposition of civil fine.

* * * The hearing shall be informal and the licensee will have the opportunity to submit facts, arguments, offers of settlement, or proposals of adjustment for review and consideration. * * *

January 30, 2012_
Date

Eric H. Holder, Jr.
Attorney General

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