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DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms, and Explosives

27 CFR Part 478

[Docket No. ATF 40P; AG Order No. 3459-2014]

RIN 1140-AA41

Commerce in Firearms and Ammunition--Reporting Theft or Loss of Firearms in Transit (2007R-9P)

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

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department of Justice proposes amending Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) regulations that concern firearms stolen or lost in transit. The proposed rule specifies that when a Federal firearms licensee (FFL) discovers a firearm it shipped was stolen or lost in transit, that sender/transferor FFL must report the theft or loss to ATF and to the appropriate local authority. The rule also reduces an FFL's reporting burden when a theft or loss involves a firearm registered under the National Firearms Act (NFA) and ensures consistent reporting to ATF's NFA Branch. In addition, the rule specifies that transferor/sender FFLs must reflect the theft or loss of a firearm as a disposition entry in their required records not later than 7 days following discovery of the theft or loss, and specifies that FFLs that report the theft or loss of a firearm and later discover its whereabouts must advise ATF that the firearm has

been located and must re-enter the firearm into their required records as an acquisition or disposition entry as appropriate.

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: You may submit comments, identified by docket number (ATF 40P), by any of the following methods—

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- Fax: (202) 648-9741.
- Mail: Brenda Raffath Friend, Mailstop 6N-602, Office of Regulatory Affairs, Enforcement Programs and Services, Bureau of Alcohol, Tobacco, Firearms, and Explosives, U.S. Department of Justice, 99 New York Avenue, NE, Washington, DC 20226; *ATTN: ATF 40P*.

Instructions: All submissions received must include the agency name and docket number for this rulemaking. All comments received will be posted without change to the Federal eRulemaking portal, <http://www.regulations.gov>, including any personal information provided. For detailed instructions on submitting comments and additional information on the rulemaking process, see the “Public Participation” heading of the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Brenda Raffath Friend, Office of Regulatory Affairs, 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) 648-7070.

SUPPLEMENTARY INFORMATION:

I. Background

The Gun Control Act of 1968 (GCA) requires each licensed importer, licensed manufacturer, licensed dealer, or licensed collector of firearms to report the theft or loss of a firearm from the licensee's inventory or collection to ATF and to the appropriate local authorities within 48 hours after the theft or loss is discovered. *See* 18 U.S.C. 923(g)(6) (requiring licensees to report thefts or losses to the Attorney General); 28 CFR 0.130(a) (delegating the Attorney General's authority to the Director of ATF).

The regulation that implements section 923(g)(6) is 27 CFR 478.39a. This section provides that each Federal firearms licensee must report the theft or loss of a firearm from the FFL's inventory (including any firearm which has been transferred from the FFL's inventory to a personal collection and held as a personal firearm for at least 1 year), or from the collection of a licensed collector, within 48 hours after the theft or loss is discovered. FFLs must report such thefts or losses by telephoning 1-888-930-9275 (nationwide ATF toll-free number) and by preparing a Federal Firearms Licensee Firearms Inventory Theft/Loss Report, ATF Form 3310.11 (Form 3310.11), in accordance with the instructions on the form. The FFL must also report the theft or loss of a firearm to the appropriate local authorities.

When there has been a theft or loss of a firearm registered under the National Firearms Act (NFA), 26 U.S.C. 5801 *et seq.*, such as a short-barreled rifle or shotgun, silencer, machinegun, or destructive device, 27 CFR 479.141 imposes a separate and additional reporting requirement. Section 479.141 states that whenever any registered NFA firearm is stolen or lost, the person losing possession thereof must, immediately upon discovery of such theft or loss, make a report to the Director of ATF showing the following: name and address of the person in whose name the firearm is registered; kind of firearm; serial number; model; caliber; manufacturer of the firearm; date and place of theft or loss; and complete statement of facts and circumstances surrounding such theft or loss. Accordingly, when an FFL loses possession of an NFA firearm, it has reporting obligations under both 27 CFR 479.141 and 27 CFR 478.39a.

Currently, an FFL reporting the theft or loss of a registered NFA firearm prepares and submits Form 3310.11 to ATF's National Tracing Center (NTC), the receiving office designated on the form, to meet 27 CFR 478.39a requirements. In addition, the FFL must submit a separate notification to the Director of ATF to meet the requirements of 27 CFR 479.141. Because no form is directly associated with this requirement, FFLs typically submit a letter to the NFA Branch of ATF, as directed in the "Important Notice" section of Form 3310.11. As a backup to this requirement, when NTC receives a completed Form 3310.11 involving the theft or loss of an NFA firearm, it currently forwards a copy of the completed form to the NFA Branch, as the completed form often contains more information than the letters FFLs submit to the NFA Branch. Form 3310.11 does not, however, address all required elements under 27 CFR 479.141 (i.e., the name and address of the person in whose name the firearm is registered). Therefore, the NFA Branch may

not currently be receiving consistent and complete information regarding the theft or loss of a registered firearm.

The instructions on Form 3310.11 also provide that FFLs must reflect the theft or loss of a firearm as a disposition entry in the Record of Acquisition and Disposition required by subpart H of 27 CFR part 478. The disposition entry should indicate whether the incident is a theft or loss, the ATF issued Incident Report Number, and the Incident Number provided by the local law enforcement agency. The instructions further state that should any of the firearms be located, they should be re-entered into the Record of Acquisition and Disposition as an acquisition entry. In addition, the “Important Notice” section on Form 3310.11 provides that FFLs who report a firearm as missing and later discover its whereabouts should advise ATF that the firearms have been located.

Current regulations do not address reporting requirements arising from firearms stolen or lost in transit between FFLs, including whether the stolen or lost firearm is considered the inventory of the sending or receiving FFL, or whether the sending or receiving FFL is responsible for reporting the theft or loss of a firearm in transit.

These gaps in the regulations may result in no one reporting the theft or loss of a firearm stolen or lost in transit. Clarifying this responsibility is important to the effective administration of the GCA and the NFA. Congress delegated the authority to prescribe rules and regulations to carry out the provisions of the GCA and NFA to the Attorney General, who has delegated to ATF the authority to investigate, administer, and enforce those laws. 18 U.S.C. 926(a); 28 CFR 0.130(a).

II. Initial Notice of Proposed Rulemaking

On August 28, 2000, ATF published in the **Federal Register** a notice proposing several amendments to the firearms regulations (Notice No. 902, 65 FR 52054). Among those amendments, ATF proposed specifying that when a firearm is stolen or lost in transit between licensees, for reporting purposes, the firearm is considered stolen or lost from the transferor's/sender's inventory. ATF noted that, in Fiscal Year (FY) 1999, there were 1,271 crime gun traces in which an FFL claimed to have never received the firearm shipped to it and no one reported the theft or loss to ATF. As proposed in 2000, a firearm stolen or lost in transit between licensees, for reporting purposes, would be considered stolen or lost from the transferor's/sender's inventory. Further, as proposed, the transferor/sender of the stolen or missing firearm would have been required to report to ATF and to the appropriate local authorities the theft or loss of the firearm within 48 hours after the transferor/sender discovered the theft or loss. ATF determined that it was more logical to put the reporting burden on the transferor/sender, rather than on the transferee/buyer, because the transferor/sender was more likely to know the circumstances of when and how a firearm is shipped. Further, if a firearm is stolen or lost in transit, the notation in the transferor's/sender's acquisition and disposition book indicating the firearm was disposed of to a particular transferee/buyer would be inaccurate. Therefore, as proposed in 2000, a transferor/sender would have been required to verify that the transferee/buyer received the shipped firearm in order to fulfill his or her statutory responsibility to maintain accurate records.

In addition, to enable the transferor/sender of the stolen or lost firearm to obtain the knowledge necessary to comply with the theft or loss reporting requirements, ATF

proposed that the transferor/sender must have or establish commercial business practices that confirm whether the transferee/buyer of the firearm ultimately received the firearm. Notice No. 902 addressed other issues as well.

With the comments received in response to various issues addressed in the notice, the Department decided to study the issues further and it subsequently withdrew these proposals. *See* 69 FR 37757 (June 28, 2004).

III. Current Notice of Proposed Rulemaking

Theft or loss of firearms in transit continues to be a problem. In its earlier notice of proposed rulemaking on this issue, ATF stated that in FY 1999, there were 1,271 crime gun traces in which an FFL claimed to have never received the firearm shipped to it and no one reported the theft or loss to ATF. More recent data from NTC show that from FY 2008 through FY 2012, in an average of 1,525 crime gun traces per year, an FFL claimed to have never received the firearm allegedly shipped to it and no one reported the theft or loss to ATF. The omissions in the regulations regarding reporting the theft or loss of a firearm in transit adversely affect ATF's and local law enforcement's investigative and tracing capabilities. Therefore, the regulations should be amended to specify who is responsible for reporting the theft or loss of a firearm in transit.

The Department has concluded that the transferor/sender of a firearm should bear the responsibility of reporting the theft or loss of that firearm when the theft or loss occurs in transit. This proposed rule is consistent with the GCA, which regulates commerce in firearms through FFLs. The GCA's scheme relies on firearms dealers to control commerce in firearms. *Huddleston v. United States*, 415 U.S. 814, 824 (1975) ("The principal agent of federal enforcement is the dealer.") Section 923(g)(6), in

particular, places the burden of reporting stolen or lost firearms on licensees. Given that the statutory reporting obligation rests with licensees, and not with the common or contract carriers that transport firearms, it is reasonable to require by regulation that licensees report thefts or losses that occur in transit. The Department further believes that it should be the transferor/sender licensees, not the recipients, who bear the reporting obligations. The transferors/senders covered by this rule will be licensees who are subject to the reporting requirement under section 923(g)(6)—but not every recipient in firearms transactions will necessarily be a licensee. Placing the reporting obligation on the transferor/sender licensee accordingly assures that, for every firearms transaction covered by section 923(g)(6), there will be an FFL responsible for reporting the theft or loss of a firearm in transit. The Department believes that this will ensure consistent reporting of stolen or lost firearms, thereby fulfilling the GCA’s purpose of “strengthen[ing] Federal regulation of interstate firearms traffic,” H.R. Rep. 90-1577 (1968), reprinted in 1968 U.S.C.C.A.N. 4410, 4412. Accordingly, this proposed rule specifies that, when a firearm is stolen or lost in transit on a common or contract carrier, for reporting purposes it is considered stolen or lost from the transferor’s/sender’s inventory. Therefore, the transferor/sender of the stolen or missing firearm must report the theft or loss to ATF and to the appropriate local authorities within 48 hours after the transferor/sender discovers the theft or loss.

With respect to firearms stolen or lost in transit between FFLs, the Department considered but did not adopt the Uniform Commercial Code’s (UCC) variable approach to the transfer of title for risk of loss purposes. In the absence of State law governing the transfer of a firearm between seller and buyer, the UCC allows a seller and buyer to

establish contractually when title to items sold passes from seller to buyer. If the sales contract requires the seller to deliver the goods to a particular destination, the risk of loss passes to the buyer when the buyer receives or is able to accept delivery of the goods. In this situation, the seller assumes the risk of goods stolen or lost in transit. If the contract does not require the seller to deliver the goods to a particular destination, the risk of loss passes to the buyer when the seller delivers the goods to a common or contract carrier for shipment. In this situation, the buyer assumes the risk of goods stolen or lost in transit. Had the Department chosen to adopt the UCC's variable risk of loss approach, the seller of the firearms would generally assume the risk of loss of firearms stolen or lost in transit when the contract requires the seller to deliver the firearms to a particular destination.

In any event, the Department has decided not to propose the variable UCC approach, which governs risk of loss, in the different context of allocating the responsibility for reporting to ATF the theft or loss of firearms in transit. Adopting the variable UCC approach for reporting firearms stolen or lost in transit would be problematic for FFLs to apply and for ATF to enforce. Rather than following a single, consistent rule holding the transferor/sender FFL responsible for reporting stolen or lost firearms, an FFL would need to examine each individual contract to determine who has reporting responsibility. For this same reason, it would be impracticable for ATF to ensure regulatory reporting compliance under the variable UCC approach. The UCC approach focuses on the ownership of the goods being shipped and allocating the risk of loss, but the primary focus of the GCA and its implementing regulations is, instead, the acquisition and disposition of firearms. Accordingly, the GCA theft or loss reporting and

recordkeeping requirements must be complied with regardless of whether the seller or buyer has title to, or bears the risk of loss of, shipped firearms stolen or lost in transit.

Therefore, the Department proposes to assign the theft/loss reporting requirement to the transferor/sender FFL, who would know how and when any firearms sent to the transferee were shipped. The transferee has an incentive to notify the transferor about any discrepancies because the transferee will not want to pay for an item the transferee did not actually receive. Upon being contacted by the transferee about a shipment discrepancy, the transferor is then in the best position to verify the theft or loss by reviewing his or her transaction records and the shipping information from the carrier the transferor had utilized. The transferor may also discover that the discrepancy is due to a recordkeeping or other human error. Whether the transferee or transferor arranges the shipment, the transferor would know how and when the firearms were shipped, and reporting of the theft or loss remains with the transferor/sender FFL.

The proposed rule also applies to transfers from a licensee to a nonlicensee, including interstate shipments for firearms repair and replacement. In such transactions, the transferor/seller is the only FFL involved in the transaction, and accordingly the FFL must assume responsibility for reporting to ATF if the shipment is lost or stolen in transit before the transferee acquires possession.

The proposed rule allows a transferor/sender to rely on notification from the transferee/buyer that the shipment was not received, and such notification triggers the reporting requirement. To ensure that a transferee/buyer receives a shipped firearm, the Department is soliciting comment on whether a transferor/sender should be required to obtain from the carrier that delivers the firearm a written or electronic confirmation of the

shipment and receipt of the firearm showing the date, time, and place of receipt, and the name of the individual who accepted receipt. In addition, the Department seeks comments on whether the transferor/sender should be required to retain the confirmation with the transferor's/sender's required records.

The Department is also soliciting comment on the costs and benefits of requiring the transferor/sender to obtain from the carrier a confirmation of the shipment and retaining the confirmation in their records. How many shipments occur annually? To what extent do FFLs as part of their regular business practices already arrange to obtain a written or electronic confirmation from the common carrier or other shipper for such shipments? How often do FFLs retain records of confirmation currently? How might such requirements be developed so as to minimize any additional burden by meshing with the FFL's regular business practices?

The proposed rule retains most of the current procedures for licensees reporting the theft or loss of firearms subject to the GCA, in accordance with the instructions on Form 3310.11. For example, instruction 7 on Form 3310.11 provides that FFLs must reflect the theft or loss of a firearm as a disposition entry in the Record of Acquisition and Disposition that is required by subpart H of part 478. It also provides that the disposition entry should indicate whether the incident is a theft or loss, the ATF Issued Incident Report Number, and the Incident Number provided by the local law enforcement agency. The proposed rule sets out these procedures in new paragraph (e) of 27 CFR 478.39a with two modifications: 1) it prescribes a time period to reflect the theft or loss of a firearm as a disposition entry (i.e., not later than 7 days following discovery of the theft or loss; and 2) it requires, rather than recommends, that the disposition entry include specified

information. The new, seven-day time-period for reporting is similar to the firearms receipt and disposition reporting requirement for licensed dealers in 27 CFR 478.125(e), which requires the “sale or other disposition of a firearm” to be recorded not later than 7 days following the date of such transaction. The Department considers a theft or loss to be a disposition that must be reported within this time period.

In addition, the “Important Notice” section of Form 3310.11 provides that licensees who report firearms as missing and later discover their whereabouts should advise ATF that the firearms have been located, and instruction 8 provides that licensees should re-enter these located firearms into the Record of Acquisition and Disposition as an acquisition entry. The proposed rule combines and sets out these procedures in new paragraph (f) of 27 CFR 478.39a with three modifications: 1) it changes the “should advise ATF” to “shall advise the [ATF] Director”; 2) changes the “should re-enter” to “shall re-enter”; and (3) specifies that the re-entry could be an acquisition or disposition entry as appropriate. Making mandatory both the advising of ATF and the re-entry of the located firearm into the Record of Acquisition and Disposition will help to improve the accuracy of NTC data, which will greatly assist law enforcement in solving violent crimes and enhancing public safety.

The proposed rule reduces a licensee’s reporting burden to ATF for the theft or loss of a registered NFA firearm by allowing submission of one Form 3310.11 to meet the requirements of 27 CFR 478.39a and 27 CFR 479.141. Currently, as discussed in section I, if a licensee’s registered NFA firearm is lost or stolen, the licensee prepares and submits Form 3310.11 to ATF’s NTC to comply with 27 CFR 478.39a requirements, which specify that Form 3310.11 be used. The licensee also provides to ATF’s NFA

Branch a separate notification—typically in the form of a letter—to comply with 27 CFR 479.141. This proposed rule revises 27 CFR 478.39a to stipulate that a licensee’s submission of a completed Form 3310.11 to ATF for the theft or loss of a registered NFA firearm satisfies the notification requirements pursuant to 27 CFR 478.39a and 27 CFR 479.141. This will reduce the licensee’s reporting burden and help to ensure that information about the lost or stolen registered NFA firearm is consistently reported to the NFA Branch. As part of this rulemaking process, ATF proposes to revise Form 3310.11, and the corresponding instructions, to denote whether the firearm being reported as lost or stolen is a registered NFA firearm and to include the name and address of the person in whose name the firearm is registered. The Office of Management and Budget will review the proposed revisions to the form during the final rulemaking process, during which the public will have opportunity to comment on the paperwork burdens associated with the form.

IV. Statutory and Executive Order Reviews

A. Executive Orders 12866 and Executive Order 13563 - Regulatory Review

This proposed rule has been drafted and reviewed in accordance with Executive Order 12866, “Regulatory Planning and Review,” section 1(b), The Principles of Regulation, and in accordance with Executive Order 13563, “Improving Regulation and Regulatory Review,” section 1(b), General 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), 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 or

more; 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 under Executive Order 12866.

Executive Orders 12866 and 13563 both direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. The Department has assessed the costs and benefits of this proposed regulation and believes that the regulatory approach selected maximizes net benefits.

Under section 923(g)(6) of the GCA and its current implementing regulation, 27 CFR 478.39a, each FFL must report the theft or loss of a firearm from the licensee’s inventory or collection within 48 hours after the theft or loss is discovered. The licensee must report the theft or loss of a firearm to ATF and to the appropriate local authorities. Current regulations do not address reporting and recordkeeping requirements for firearms lost or stolen while in transit. This proposed rule specifies that when a firearm is stolen or lost in transit, for reporting purposes it is considered stolen or lost from the transferor’s/sender’s inventory.

The GCA and the current implementing regulations have long required that a licensee must report the theft or loss of a firearm. This proposed rule specifies the licensee required to submit the required report if a firearm is lost or stolen in transit on a

common or contract carrier from a licensee to another person. This proposed rule retains most of the existing requirements under 27 CFR part 478, subpart H, and the instructions for Form 3310.11 with respect to how FFLs are to record the theft or loss of firearms from their inventories in the Record of Acquisition and Disposition.

The proposed rule would reduce the current reporting burden on licensees when the theft or loss involves a registered NFA firearm. Currently, as discussed in section I, licensees submit Form 3310.11 to NTC to comply with 27 CFR 478.39a, and, if the licensee is the person who lost the firearm, provide additional notification to the NFA Branch to comply with 27 CFR 479.141. In this proposed rule, a licensee, to meet 27 CFR 478.39a requirements, completes and submits Form 3310.11 to NTC. If the theft/loss involves a registered NFA firearm; NTC would notify the NFA Branch. This would satisfy 27 CFR 479.141 notification requirements; licensees would no longer have to submit additional notification to ATF.

Although there is no definitive count of the total number of firearms that were lost or stolen in transit, ATF can provide some sense of volume based on tracing data. From FY 2008 through FY 2012, there was an average of 1,525 crime gun traces per year where the firearm was traced back to an FFL that claimed it never received the firearm allegedly shipped to it, but no theft or loss was reported to ATF. These numbers reflect only those cases in which a firearms trace was initiated. The full count of firearms lost or stolen in transit that are not being reported to ATF is likely significantly higher than those traced. That ATF and local authorities do not have timely information about lost or stolen firearms adversely affects their investigation and tracing capabilities, and therefore poses public safety risks.

Pursuant to the instructions on Form 3310.11, a separate form is required for each theft/loss. ATF estimates that it takes an FFL 24 minutes to complete Form 3310.11; the postage cost to mail the form to NTC is 49 cents. If an FFL completed a separate Form 3310.11 for each of the average of 1,525 firearms that tracing data indicates are lost or stolen yearly but are not currently being reported,¹ ATF estimates the total burden hours to be 610 (1,525 x 24/60), and the current estimated cost is \$20,005. (Cost of completing the form = 24 minutes at \$31.57 per hour x 1,525 = \$19,258; Cost of mailing the form = \$.49 x 1,525 = \$747). ATF estimated the cost of the time for an FFL to complete Form 3310.11 using employee compensation data for December 2013 as determined by the U.S. Department of Labor, Bureau of Labor Statistics (BLS). *See* Bureau of Labor Statistics, Employer Costs for Employee Compensation—December 2013, available at <http://www.bls.gov/news.release/pdf/ecec.pdf>. The BLS determined the hourly compensation (which includes wages, salaries, and benefits) for civilian workers to be \$31.57.

The instructions on Form 3310.11 also provide that FFLs must report firearms thefts/losses by telephone to ATF. ATF estimates that it takes an FFL 24 minutes to call and provide the requisite information to ATF. If an FFL called ATF for each of the average of 1,525 firearms that tracing data indicates are lost or stolen yearly but are not currently being reported,² ATF estimates the total burden hours to be 610 (1,525 x 24/60), and the current estimated cost is \$19,258 (24 minutes at \$31.57 per hour x 1,525).

¹ As noted above, the full count of firearms lost or stolen in transit that are not being reported to ATF is likely significantly higher than the number discovered through tracing data. ATF nonetheless relies on the average of 1,525 firearms per year for this cost calculation because it is the best information available.

² See Footnote 1.

Therefore, the combined total estimated burden hours for submitting Form 3310.11 and calling ATF are 1,220 (610 + 610). The combined total estimated costs for fulfilling those same two requirements are \$39,263 (\$20,005 + \$19,258).

Alternatives, such as the UCC variable approach discussed in Section III of this SUPPLEMENTARY INFORMATION, are more burdensome than the approach taken in this proposed rule. The UCC variable approach would be more burdensome for FFLs because, in each case, the FFLs would need to examine the terms of the individual contracts to determine how the contract allocates the risk of loss as between the two parties. In contrast, the proposed rule provides a simple, consistent rule so there is no basis for uncertainty or a need for additional review. For reporting purposes, the proposed rule assigns the theft/loss reporting requirement to the transferor/sender.

In addition, this proposed rule alleviates reporting burdens on licensees in that licensees need only report the theft or loss of a registered NFA firearm once to ATF, instead of reporting separately to NTC and the NFA Branch. As the licensee is basically providing the same information for both reporting requirements, ATF estimates that it takes the same amount of time and cost for postage, and uses the same hourly compensation as listed above (i.e., 24 minutes for time, 49 cents for postage, and \$31.57 for hourly compensation). Currently, the NFA Branch receives notification on the theft/loss of a registered NFA firearm from approximately 60 licensees annually. ATF estimates the total burden hours to be 24 (60 x 24/60) and the total cost to be \$787. (Cost of submitting the notification = 24 minutes at \$31.57 per hour x 60 = \$758; Cost of mailing the notification = \$.49 x 60 = \$29.00). Therefore, ATF estimates the savings to be these amounts.

B. Executive Order 13132

This proposed rule 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, “Federalism,” the Attorney General has determined that this proposed regulation does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

C. Executive Order 12988

This proposed rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988, “Civil Justice Reform.”

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 regulation and, by approving it, certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities.

Under section 923(g)(6) of the GCA and its implementing regulation, 27 CFR 478.39a, each FFL must report the theft or loss of a firearm from the licensee’s inventory or collection within 48 hours after the theft or loss is discovered. The licensee must report the theft or loss of a firearm to ATF and to the appropriate local authorities.

This proposed rule clarifies that when a firearm is stolen or lost in transit, for reporting purposes, it is considered stolen or lost from the transferor's/sender's inventory.

As discussed in section I, the current regulation requires that an FFL report thefts/losses telephonically to ATF and complete and submit to NTC a separate Form 3310.11 for each theft/loss. ATF estimates the time to complete the form as 24 minutes; the time for the telephone call as 24 minutes; and the postage cost as 49 cents. If an FFL called ATF to report the theft/loss, and completed a separate Form 3310 for each of the average of 1,525 firearms that tracing data indicates are lost or stolen yearly but are not currently reported, ATF estimates the total cost of completing and mailing the form and calling ATF to be \$39,263. *See* section IV.A. for a full discussion of these costs.

Therefore, this proposed rule will not impose a significant impact.

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 enterprises to compete with foreign-based enterprises 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. 2 U.S.C. 1532(a) and 1533(a).

G. Paperwork Reduction Act

This proposed rule would revise an existing reporting and recordkeeping requirement under the Paperwork Reduction Act. It also proposes to eliminate an existing reporting requirement. The current regulation at 27 CFR 478.39a provides that each FFL must report the theft or loss of a firearm from the licensee's inventory or collection within 48 hours after the theft or loss is discovered. Licensees must report to ATF such thefts or losses both telephonically and by preparing Form 3310.11. The licensee must also report the theft or loss of a firearm to the appropriate local authorities.

Pursuant to 27 CFR 479.141 and according to the instructions on Form 3310.11, licensees reporting the theft or loss of a registered NFA firearm must provide additional notification to ATF. As discussed previously in section I, no form exists for this purpose, and the person reporting typically submits a letter with the required information to the NFA Branch. As part of this rulemaking, ATF is proposing to revise Form 3310.11 to capture the information required by 27 CFR 479.141. Therefore, a licensee would be able to satisfy the required notification to the NFA Branch by submitting Form 3310.11 to NTC, and NTC will notify the NFA Branch. Submitting Form 3310.11 will satisfy both requirements under 27 CFR 478.39a and 27 CFR 479.141 with one notification.

In addition, Form 3310.11 instructions indicate that a licensee must reflect the theft or loss of a firearm as a disposition entry in the Record of Acquisition and Disposition required by subpart H of part 478. These instructions further state that the disposition entry should indicate whether the incident is a theft or loss, the ATF-issued Incident

Report Number, and the Incident Number provided by the local law enforcement agency. Finally, the instructions indicate that should any of the firearms be located, they should be re-entered into the Record of Acquisition and Disposition as an acquisition entry. The proposed rule adds both sets of these instructions to the regulatory text in 27 CFR 478.39a with modifications. See section III for full discussion of these revisions.

The collections of information contained in 27 CFR 478.39a relate to Form 3310.11 and have been approved by the Office of Management and Budget under control number 1140-0039. This proposed rule specifies that when a firearm is stolen or lost in transit, for reporting purposes, it is considered stolen or lost from the transferor's/sender's inventory.

ATF is submitting a request to revise currently approved OMB control number 1140-0039. ATF requests public comments on all aspects of this proposed revised collection, including comments that:

- evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- enhance the quality, utility, and clarity of the information to be collected; and
- minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic,

mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

The estimated total annual burden hours and related information (number of respondents, frequency of responses, costs, etc.) for the proposed revisions to Form 3310.11 appear below.

OMB No.: 1140-0039.

Estimated total annual reporting and/or recordkeeping burden: 2,210 hours

Estimated average burden hours per respondent and/or recordkeeper: 24 minutes

Estimated number of annual respondents and/or recordkeepers: 1,525

Estimated annual frequency of responses: 1

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.

Comments submitted in response to ATF's previous proposed rule relating to firearms stolen or lost in transit (Notice No. 902, August 28, 2000, 65 FR 52054), if applicable, must be resubmitted for purposes of this rulemaking proceeding.

All comments must reference this document docket number (ATF 40P), 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 in 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 minimum 12-point font size (.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 minimum 12-point font size (.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 Brenda Raffath Friend, Office of Regulatory Affairs, 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, 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 is revised to read as follows:

Authority: 5 U.S.C. 552(a); 18 U.S.C. 921-931; 44 U.S.C. 3504(h).

2. Revise § 478.39a to read as follows:

§ 478.39a Reporting theft or loss of firearms.

(a)(1) Each licensee shall report the theft or loss of a firearm from the licensee's inventory (including any firearm which has been transferred from the licensee's inventory to a personal collection and held as a personal firearm for at least 1 year), or from the collection of a licensed collector, within 48 hours after the theft or loss is discovered.

(2) When a firearm is stolen or lost in transit on a common or contract carrier, it is considered stolen or lost from the transferor's/sender's inventory for reporting purposes. Therefore, the transferor/sender of the stolen or missing firearm shall report the theft or loss of the firearm within 48 hours after the transferor/sender discovers the theft or loss.

(b) Each licensee shall report the theft or loss by telephoning ATF at 1-888-930-9275 (nationwide toll free number), and by preparing and submitting to ATF a Federal Firearms Licensee Theft/Loss Report, ATF Form 3310.11, in accordance with the instructions on the form. The original of the report shall be retained by the licensee as part of the licensee's required records.

(c) When a licensee submits to ATF a Federal Firearms Licensee Theft/Loss Report, ATF Form 3310.11, for the theft or loss of a firearm registered under the National Firearms Act, this also satisfies the notification requirement under § 479.141 of this chapter.

(d) Theft or loss of any firearm shall also be reported to the appropriate local authorities.

(e) Licensees shall reflect the theft or loss of a firearm as a disposition entry in the Record of Acquisition and Disposition required by subpart H of this part, not later than 7 days following discovery of the theft or loss. The disposition entry shall record whether the incident is a theft or loss, the ATF-issued Incident Report Number, and the Incident Number provided by the local law enforcement agency.

(f) Licensees who report the theft or loss of a firearm and later discover its

whereabouts shall advise the Director that the firearm has been located, and shall re-enter the firearm in the Record of Acquisition and Disposition as an acquisition or disposition entry as appropriate.

August 4, 2014
Date

Eric H. Holder, Jr.
Attorney General

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