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DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms, and Explosives

27 CFR Parts 478 and 479

[Docket No. ATF 29P]

RIN 1140-AA33

Identification Markings Placed on Firearm Silencers and Firearm Mufflers

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

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Department of Justice is considering amending the regulations of the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) to require licensed manufacturers, licensed importers, and nonlicensed makers to place identification markings on the outer tube of firearm silencers and firearm mufflers. The Department wishes to gather information and comments from the public and industry concerning whether or not the regulations should be amended.

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 29P), by any of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- Fax: (202) 648-9741.
- Mail: Shermaine Kenner, Mailstop 6N-518, Office of Regulatory Affairs, Enforcement Programs and Services, Bureau of Alcohol, Tobacco, Firearms, and Explosives, 99 New York Avenue, NE, Washington, DC 20226: *ATTN: ATF29P*.

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: Shermaine Kenner, 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

Section 923(i) of the Gun Control Act of 1968 (GCA), as amended (18 U.S.C. chapter 44), requires licensed importers and licensed manufacturers to identify, by means of a serial number, each firearm imported or manufactured by such importer or manufacturer. The serial number must be engraved or cast on the receiver or frame of the weapon in such manner as the Attorney General prescribes by regulation. As defined in section 921(a)(3) of the GCA, the term “firearm” includes any firearm muffler or firearm silencer. The terms “firearm silencer” and “firearm muffler” are also defined in section 921(a)(24), as follows:

[A]ny device for silencing, muffling, or diminishing the report of a portable firearm, including any combination of parts, designed or redesigned, and intended for use in assembling or fabricating a firearm silencer or firearm muffler, and any part intended only for use in such assembly or fabrication.

With respect to certain firearms subject to the National Firearms Act (NFA) (26 U.S.C. chapter 53) (e.g., machine guns, any silencer (as defined in section 921(a)(24) of the GCA)), 26 U.S.C. 5842(a) requires each manufacturer and importer and anyone making a firearm to identify by a serial number each firearm manufactured, imported, or made. The serial number may not be readily removed, obliterated, or altered. Section 5842(a) also requires the firearm to be identified by the name of the manufacturer, importer, or maker, and such other identification as the Attorney General may prescribe by regulation.

Regulations that implement 18 U.S.C. 923(i) are set forth in 27 CFR 478.92. In general, § 478.92(a)(1)(i) requires licensed manufacturers and licensed importers of firearms to legibly identify each firearm manufactured or imported by engraving, casting,

stamping (impressing), or otherwise conspicuously placing on the frame or receiver an individual serial number. The serial number must be placed in a manner not susceptible of being readily obliterated, altered, or removed and must not duplicate any serial number placed by a licensed importer or manufacturer on any other firearm. For firearms manufactured or imported on and after January 30, 2002, the engraving, casting, or stamping (impressing) of the serial number must be to a minimum depth of .003 inch and in a print size no smaller than 1/16 inch.

In addition, § 478.92(a)(1)(ii) requires licensed manufacturers and licensed importers to conspicuously place additional identification markings on the frame, receiver, or barrel of each firearm imported or manufactured in a manner not susceptible of being readily obliterated, altered, or removed. For firearms manufactured or imported on and after January 30, 2002, the engraving, casting, or stamping (impressing) of this information must be to a minimum depth of .003 inch. The additional information includes:

1. The model, if such designation has been made;
2. The caliber or gauge;
3. The name of the licensed manufacturer or licensed importer (or recognized abbreviation) and, when applicable, the name of the foreign manufacturer;
4. In the case of a domestically made firearm, the city and State (or recognized abbreviation thereof) where the licensed manufacturer maintains his place of business; and
5. In the case of an imported firearm, the name of the country in which it was manufactured and the city and State (or recognized abbreviation thereof) where the licensed importer maintains his place of business.

The same marking requirements apply to manufacturers, importers or makers of NFA firearms pursuant to 27 CFR 479.102(a).

The current regulations do not specify the placement of required identification markings on firearm silencers and firearm mufflers. However, ATF has provided the industry with some guidance on this issue. In its “Frequently Asked Questions—Silencers,” dated April 17, 2008, ATF stated the following:

The silencer must be marked in accordance with 27 C.F.R. §§ 478.92 and 479.102. The regulations require that the markings be conspicuous and legible, meaning that the markings may be placed on any external part, such as the outer tube or end cap. ATF strongly recommends that manufacturers place all required markings on the outer tube of the silencer, as this is the accepted industry standard. Moreover, this practice eliminates the need to remark in the event an end cap bearing the markings is damaged and requires replacement.

II. National Firearms Act Trade and Collectors Association Petition

On April 27, 2008, ATF received a petition filed on behalf of the National Firearms Act Trade and Collectors Association (NFATCA). NFATCA is a trade group representing the firearms and import community. Some of its members primarily manufacture, transport, and possess silencers for lawful use.

Although in its April 2008 guidance ATF recommended that manufacturers place all required markings on the outer tube of the silencer, it stated that the required markings could also be placed on any external part of the silencer, including the end cap, provided the required markings are conspicuous and legible. According to the petitioner, the industry’s response to ATF’s guidance was not favorable:

There has been an overwhelmingly negative response from the members of our trade to this particular guidance. . . . there is strong policy agreement between ATF and our trade that only the silencer [outer] tube should be marked in accordance with the marking requirements of Parts 478 and 479 of Title 27 of the Code of Federal Regulations. . . . Allowing end caps to be the possible marking

location for silencers does constitute a serious public safety issue in the areas of diversion, tracing, and evasion of other NFA rules.

In addition, the petitioner stated that “[w]e have also been further advised that the Bureau does not see how they would be able to take any adverse legal action against a person or entity that should decide to mark the end caps of a silencer without promulgating a change in the regulations.”

Accordingly, the petitioner requested that the relevant regulations be amended to require that a silencer be marked on the outer tube (as opposed to other locations), unless a variance is granted by the Director on a case-by-case basis for good cause. ATF finds that the petitioner has raised valid concerns and it believes that an amendment of the regulations is warranted. Therefore, based upon the statutory language and the facts as outlined below, ATF seeks to address the marking requirements of silencers to ensure that the serial numbers are placed on the part of the silencer that is least likely to be destroyed or removed, and therefore most likely to ensure that law enforcement are able to identify and trace a particular firearm silencer or firearm muffler.

III. Discussion

ATF is requesting information from industry members, trade associations, consumers, and all other interested parties to determine whether to require placement of identification markings on the outer tube of firearm silencers and firearm mufflers. Along with industry members, ATF considers the term “outer tube” to mean the largest external part of a silencer and is that portion of a silencer which encapsulates all components of the silencing unit and which contains and controls the expansion of the escaping gases.

As indicated, placing all required markings on the outer tube of a completed firearm silencer or firearm muffler is the accepted industry standard. In addition, requiring identification markings to be placed on a single part provides consistency of markings throughout the industry and eliminates the need to remark a device in the event an end cap bearing the markings is damaged and requires replacement. If a silencer is not aligned with the barrel, the end cap might be damaged when a projectile passes through it. Outer tubes are rarely damaged in this way. Such damage often requires replacement of the end cap. Further, end caps are often removable so that processors may access the internal components within the silencer. Permitting serialization of a removable and fungible component may facilitate trafficking or illegal transfer of silencers by permitting registrants to use the serialized end cap of a registered silencer with an otherwise unregistered silencer.

Although ATF is soliciting comments on the following specific questions, it is also requesting any relevant information on the subject.

1. What percentage of manufacturers mark the end cap? If an outer tube is present, why do manufacturers mark the end cap instead of the outer tube of the silencer?
2. If there is an additional cost (fixed or variable) between marking the end cap instead of the outer tube, how would ATF estimate such costs across the entire industry?
3. Are there other parts or locations where the markings may be placed and still meet the requirements? If so, where?
4. Are there silencer designs for a completed device for which marking the outer tube would be impossible? If so, what are those designs?

5. When there are multiple outer tubes that make up one complete device, how should they be marked?

IV. Statutory and Executive Order Review

This advance notice of proposed rulemaking (ANPRM) 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 ANPRM is a “significant regulatory action” under Executive Order 12866, section 3(f), and accordingly this ANPRM has been reviewed by the Office of Management and Budget. However, this action does not propose or impose any requirements. The ANPRM is being published to seek information from the public about the feasibility of marking silencer tubes.

Furthermore, the requirements of section 603 of the Regulatory Flexibility Act do not apply to this action because, at this stage, it is an ANPRM and not a “rule” as defined in section 601 of the Regulatory Flexibility Act. Following review of the comments received in response to this ANPRM, if ATF promulgates a notice or notices of proposed rulemaking regarding this matter, ATF will conduct all analyses required by the Regulatory Flexibility Act, Executive Order 12866, and any other statutes or Executive Orders relevant to those rules and in effect at the time of promulgation.

Public Participation

A. Comments Sought

ATF requests comments on this ANPRM from all interested persons. ATF specifically requests comments on the clarity of this ANPRM and how easy it is to understand. Additional comments are sought on the costs or benefits of the proposal in this ANPRM and on the appropriate methodology and data for calculating those costs and benefits.

All comments must reference the docket number (ATF 29P), be legible, and include the commenter's complete first and last name and full mailing address. ATF will not consider, or respond to, comments that do not meet these requirements or comments containing profanity. In addition, if ATF cannot read your comment due to technical difficulties and cannot contact you for clarification, ATF may not be able to consider your comment.

ATF will carefully consider all comments, as appropriate, received on or before the closing date, and will give comments received after that date 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.

ATF will not acknowledge receipt of comments.

B. Confidentiality

ATF will make all comments meeting the requirements of this section available for public viewing at ATF and on the Internet as part of the eRulemaking initiative, and subject to the Freedom of Information Act. ATF will not redact personal identifying information that appears within the comment and it will appear on the Internet.

The commenter should not include material that is considered confidential or inappropriate for disclosure to the public. Any person submitting a comment containing confidential material shall specifically designate that portion of the comment that contains material that is confidential under law (e.g., trade secrets, processes). The commenter shall place any portion of a comment that is confidential under law on pages separate from the balance of the comment with each page prominently marked “confidential” at the top of the page.

Confidential information will be included in the rulemaking administrative 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, a commenter’s full first and last name and complete mailing address are not exempt from disclosure.

C. Submitting Comments

Submit comments in any of three ways (but do not submit the same comments multiple times or by more than one method).

- *Federal eRulemaking Portal:* We strongly recommend that you submit your comments to ATF via the Federal eRulemaking portal. Visit <http://www.regulations.gov> and follow the instructions for submitting comments. Comments will be posted within a few days of being submitted. However, if large volumes of comments are being processed simultaneously, your comment may not be viewable for up to several weeks. Please keep the comment tracking number that [regulations.gov](http://www.regulations.gov) provides after you have successfully uploaded your comment.

- *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 the commenter's complete first and last name and full mailing address, be signed, and may be of any length.

- *Facsimile*: 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) Be signed and contain the commenter's complete first and last name and full mailing address; and

- (4) Be no more than five pages long.

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 the petition, this advance notice, and the comments received will be available at <http://www.regulations.gov> (search for Docket No. ATF 29P) and for public inspection by appointment during normal business hours at: ATF Reading Room, Room 1E-063, 99 New York Avenue, NE., Washington, DC 20226; telephone: (202) 648-8740.

Drafting Information

The author of this document is Shermaine Kenner, Office of Regulatory Affairs, Enforcement Programs and Service; Bureau of Alcohol, Tobacco, Firearms, and

Explosives.

List of Subjects

27 CFR Part 478

Administrative practice and procedure, Arms and munitions, Customs duties and inspection, Exports, Imports, Intergovernmental relations, Law enforcement officers, Military personnel, Penalties, Reporting and recordkeeping requirements, Research, Seizures and forfeitures, Transportation.

27 CFR Part 479

Administrative practice and procedure, Arms and munitions, Customs duties and inspection, Excise taxes, Exports, Imports, Military personnel, Penalties, Reporting and recordkeeping requirements, Seizures and forfeitures, Transportation.

Authority and Issuance

This notice is issued under the authority of 5 U.S.C. 552(a); 18 U.S.C. 847, 921-931; and 44 U.S.C. 3504(h).

Approved:

Thomas E. Brandon
Deputy Director

April 28, 2016

Date

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