



DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms, and Explosives

27 CFR part 478

[Docket No. ATF-2026-0008; ATF No. 2025R-25P]

RIN 1140-AA85

Clarifying Exceptions to the Brady Act Background Check Requirement

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

ACTION: Notice of proposed rulemaking.

SUMMARY: The Bureau of Alcohol, Tobacco, Firearms, and Explosives (“ATF”) proposes amending Department of Justice (“Department”) regulations to clarify when a state’s firearms-related permit meets the requirements under the Gun Control Act of 1968, as amended, as an alternative to the National Instant Criminal Background Check System check and includes minor changes to ensure that the regulatory language adheres closely to the language used in the statute.

DATES: Comments must be submitted in writing, and must be submitted on or before (or, if mailed, must be postmarked on or before) [INSERT DATE 90 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. Commenters should be aware that the federal e-rulemaking portal comment system will not accept comments after midnight Eastern Time on the last day of the comment period.

ADDRESSES: You may submit comments, identified by RIN 1140-AA85, by either of the following methods —

- *Federal e-rulemaking portal:* <https://www.regulations.gov>. Follow the instructions for submitting comments.
- *Mail:* ATF Rulemaking Comments; Mail Stop 6N-518, Office of Regulatory Affairs; Enforcement Programs and Services; Bureau of Alcohol, Tobacco, Firearms, and

Explosives; 99 New York Ave, NE; Washington, DC 20226; *ATTN: RIN 1140-AA85*.

Instructions: All submissions must include the agency name and number (RIN 1140-AA85) for this notice of proposed rulemaking (“NPRM” or “proposed rule”). ATF may post all properly completed comments it receives from either of the methods described above, without change, to the federal e-rulemaking portal, <https://www.regulations.gov>. This includes any personally identifying information (“PII”) or business proprietary information (“PROPIN”) submitted in the body of the comment or as part of a related attachment they want posted. Commenters who submit through the federal e-rulemaking portal and do not want any of their PII posted on the internet should omit it from the body of their comment and in any uploaded attachments that they want posted. If online commenters wish to submit PII with their comment, they should place it in a separate attachment and mark it at the top with the marking “CUI//PRVCY.” Commenters who submit through mail should likewise omit their PII or PROPIN from the body of the comment and provide any such information on the cover sheet only, marking it at the top as “CUI//PRVCY” for PII, or as “CUI//PROPIN” for PROPIN. 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. In accordance with 5 U.S.C. 553(b)(4), a summary of this rule may be found at <https://www.regulations.gov>. Commenters must submit comments by using one of the methods described above, not by emailing the address set forth in the following paragraph.

FOR FURTHER INFORMATION CONTACT: Office of Regulatory Affairs, by email at ORA@atf.gov, by mail at Office of Regulatory Affairs; Enforcement Programs and Services; Bureau of Alcohol, Tobacco, Firearms, and Explosives; 99 New York Ave, NE; Washington, DC 20226, or by telephone at 202-648-7070 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION:

I. Background

The Attorney General is responsible for enforcing the Gun Control Act of 1968 (“GCA”), as amended. This responsibility includes the authority to promulgate regulations necessary to enforce the provisions of the GCA.¹ *See* 18 U.S.C. 926(a). Congress and the Attorney General have delegated the responsibility for administering and enforcing the GCA to the Director of ATF (“Director”), subject to the direction of the Attorney General and the Deputy Attorney General. *See* 28 U.S.C. 599A(b)(1), (c)(1); 28 CFR 0.130(a)(1)–(2); Treas. Order No. 221(2)(a), (d), 37 FR 11696–97 (June 10, 1972).² Accordingly, the Department and ATF have promulgated regulations to implement the GCA in 27 CFR part 478.

The Brady Handgun Violence Prevention Act (“Brady Act”), which amended the GCA, generally requires federal firearms licensees (“FFLs”) to initiate a National Instant Criminal Background Check System (“NICS”) background check before transferring a firearm to a person who is not an FFL, i.e., a non-licensee. 18 U.S.C. 922(t). The Department delegated oversight of NICS to the Federal Bureau of Investigation (“FBI”). *See* 28 CFR part 25. However, the Brady Act contains exceptions, codified at 18 U.S.C. 922(t)(3), to the NICS check requirement, including an exception for persons who have certain state permits that authorize them to possess or acquire firearms. Specifically, the exceptions provide that the NICS check is not required if the non-licensee transferee presents a license or permit that: (1) allows that person to possess or acquire a firearm; (2) was issued not more than five years earlier by the state in which the transfer is to take place; and (3) the law of the state provides that such a permit is to be issued only after an authorized government official has verified that the information available to such official does not indicate that possession of a firearm

¹ Some GCA provisions still refer to the “Secretary of the Treasury.” However, the Homeland Security Act of 2002, Pub. L. 107–296, 116 Stat. 2135, transferred the functions of ATF from the Department of the Treasury to the Department of Justice, under the general authority of the Attorney General. 26 U.S.C. 7801(a)(2); 28 U.S.C. 599A(c)(1). Thus, for ease of reference, this proposed rule refers to the Attorney General where relevant.

² In Attorney General Order Number 6353–2025, the Attorney General delegated authority to the Director to issue regulations pertaining to matters within ATF’s jurisdiction, including under the National Firearms Act, GCA, and Title XI of the Organized Crime Control Act. ATF’s jurisdiction also includes those portions of sec. 38 of the Arms Export Control Act pertaining to permanently importing defense articles and services and the Contraband Cigarette Trafficking Act.

by such other person would be in violation of law. ATF implemented this provision of the statute in 27 CFR 478.102(d) in 1998.³

In May 2025, after conducting a review of the laws and regulations of all U.S. states and territories, ATF issued an open letter to all FFLs on the NICS alternate permit exception (“Open Letter”) providing updated guidance regarding which state firearms permits meet the conditions to qualify under the exception to the NICS background check.⁴ As part of this review, ATF examined whether the laws of each state require the issuing authority to (1) check available information, including conducting a NICS background check, and (2) not issue a permit when the available information indicates that the applicant is prohibited from possessing firearms under federal, state, or local law. ATF also published on its website an accompanying chart showing its assessment of qualifying and non-qualifying NICS alternate permits.⁵

The Open Letter addressed the process FFLs should follow if a non-licensee presents a qualifying NICS alternate permit. This process includes verifying that the permit was issued or renewed not more than five years earlier by the state in which the transfer is to occur and that the permit has not expired under state law. The Open Letter reminded FFLs that while certain permits, including “lifetime” permits, may be valid under state law for more than five years, these only qualify as NICS alternatives for five years from the date they were issued. FFLs are responsible for verifying the date the permit was issued or its renewal date before treating the transaction as NICS-exempt.

The Open Letter cautions FFLs that they should conduct a NICS check whenever they are unable to confirm the validity of the permit or the date a permit that is valid for more

³ Implementation of Public Law 103–159, Relating to the Permanent Provisions of the Brady Handgun Violence Prevention Act, 63 FR 58279 (Oct. 29, 1998).

⁴ ATF, Open Letter to All Federal Firearms Licensees (May 23, 2025), <https://www.atf.gov/file/201946/download> [<https://perma.cc/K2JE-2FGZ>].

⁵ ATF, Brady Permit Chart (last reviewed Sep. 26, 2025), <https://www.atf.gov/rules-and-regulations/laws-alcohol-tobacco-firearms-and-explosives/gun-control-act/brady-law/brady-permit-chart> [<https://perma.cc/B3J7-F594>].

than five years was issued. *See* Open Letter at 2. Federal law does not require an FFL to accept a firearm permit as an alternate even if they are able to confirm the permit's validity and that the permit is less than five years old.

II. Proposed Rule

This proposed rulemaking would amend the language of 27 CFR 478.102(d) regarding when a state's firearms-related permit meets the requirements of 18 U.S.C. 922(t)(3) such that a NICS check does not need to be conducted. This rule proposes to add the word "unexpired" in § 478.102(d)(1) as a condition of a qualifying permit because, under certain state law or in certain circumstances, some permits are considered valid even after they have expired. However, expired permits cannot be used as an alternative to conducting a NICS check under federal firearms law. To address potential confusion, this rule proposes to add the word "unexpired" after "valid" to clarify that such permits must be both valid and unexpired.

This proposed rule would also clarify the information ATF considers for a permit to qualify as an alternative to a NICS check. First, the proposal would clarify when ATF considers a permit to be issued within the previous five years. Specifically, "lifetime" permits and permits nominally issued for more than five years may qualify as alternate permits if the state's law requires a state official to verify or reverify via NICS that the permit-holder is not prohibited from possessing a firearm, or otherwise confirm that the permit-holder is not prohibited by federal law from possessing a firearm, within the previous five years and the government official complies with that requirement. When those conditions are met, the license is effectively reissued, in the same way as if the permit-holder had reapplied. For example, Alabama issues a concealed carry lifetime permit and the state's law requires that, "[A]t least once every five years from the date of issuance, each sheriff shall conduct a background check on each individual with a lifetime carry permit issued within his or her county" Ala. Code 13A-11-75(h). These permits qualify because Alabama law requires

the state official to conduct a background check on a five-year recurring basis.

Second, the proposed rule would define the phrase “only after an authorized government official has verified that the information available to such official” to mean that the state statute(s) provides that an authorized government official verifies information available to such official, to include a background check through NICS or otherwise confirms that the permit-holder is not prohibited by federal law from possessing a firearm, in order to determine whether the applicant is prohibited from possessing firearms under federal, state, or local law. In a near majority of instances, states issue qualifying NICS alternate permits through a state criminal justice agency (“CJA”). However, if a state issues permits through a non-CJA, there may be difficulty directly accessing NICS because of FBI regulations, which limit NICS access to “criminal justice agencies in connection with the issuance of a firearm-related . . . permit or license.” 28 CFR 25.6(j)(1). Nevertheless, a non-CJA may still access relevant criminal history information to conduct a qualifying background check equivalent to a NICS check before issuing any such permits. For instance, Florida’s Department of Agriculture and Consumer Services issues concealed weapons licenses for the state. Although the Florida concealed weapons permit does not qualify as a NICS alternative permit for other reasons,⁶ nevertheless a NICS background check is completed because the Florida Department of Law Enforcement runs a NICS check on behalf of Florida’s Department of Agriculture and Consumer Services.

However, in the event that a non-CJA does not have the ability to access NICS or their state’s point of contact for NICS, this rule proposes to provide an exception that the authorized government official need only search and review all information otherwise available to such official to determine if possession, acquisition, or carrying of the firearm

⁶ Florida law provides for issuing a Concealed Weapon or Firearm License to certain individuals without conducting a NICS background check. *See* Fla. Stat. 790.06(5)(b), 790.06(6)(e), 790.061 (exempting law enforcement officers, correctional officers, or correctional probation officers for one year after retirement, and consular security officials of a qualifying foreign government, and Florida judges and justices from the NICS background check process prior to obtaining the license). Furthermore, NICS background checks are not conducted prior to issuing a renewal license. *See* Fla. Stat. 790.06(11)(a).

would be lawful. Additionally, the proposed rule would provide that information otherwise available to the government official does not need to include information that requires extraordinary effort, expense, or means to obtain (e.g., sending an investigator to go to a courthouse to research records). A misdemeanor assault conviction, for example, could be disqualifying depending on whether it was a crime of domestic violence. *See* 18 U.S.C. 922(g)(9). But many criminal justice records specific to misdemeanor assault convictions are often not complete enough to determine if there is a qualifying relationship under federal law that would make the applicant a prohibited possessor. Often additional research is required to include supporting court documents that are not available in NICS or a state's criminal history records. Therefore, this section would clarify that government officials are not required to use or undertake extraordinary effort, expense, or means when further research is required when a NICS check (or its equivalent) is not available to conduct a background check. They need only base their permitting decisions on the information that is readily accessible to them — for example, information readily accessible through NICS, state agencies or databases, or state or local courts.

Third, the proposed rule would inform the public that the relevant inquiry in determining whether a state permit is acceptable as an alternative to a NICS check when acquiring a firearm is whether the language of the state statute(s) conforms with the requirements under 18 U.S.C. 922(t)(3)(A)(ii). Specifically, the proposed amendments would provide that when verifying whether an alternate permit qualifies under 18 U.S.C. 922(t), ATF considers the law of the state, state regulation, any precedential judicial opinions, and any opinions of the executive branch that are binding and have the force and effect of law. The proposal clarifies that a permit that is erroneously granted does not, by itself, establish the law of the state.

This provision is necessary to redress confusion about certain permit audits. In the past, the federal government has audited states to see whether they issued permits to

prohibited persons. In response to some audits (e.g., involving Alabama and Michigan), ATF withdrew recognition of the states' permits as a valid NICS alternative because, in part, licensing officials in those states had issued permits to prohibited persons. But not recognizing permits as NICS alternatives on this basis was not consistent with the Brady Act because the Act only requires that "the law of the State provides that such a permit is to be issued only after an authorized government official has verified that the information available to such official does not indicate that possession of a firearm by such other person would be in violation of law." 18 U.S.C. 922(t)(3)(A)(ii). The mere fact that permits may have been erroneously granted by an authorized state official does not, by itself, establish that "the law of the state" authorized permits to be issued to prohibited persons. Nor does the Brady Act contemplate that state officials will be perfect in issuing licenses. The NICS system is itself imperfect; even after an exhaustive search of records, NICS is unable to resolve about 3 to 5 percent of background checks each year. State and local licensing officials will occasionally have to issue licenses on less than perfect information, despite running a comprehensive background check.

Fourth, the proposed rule would address circumstances in which states offer multiple applying and issuing procedures to obtain firearm permits (or licenses). In some jurisdictions, the same type of firearm permit may be alternatively issued pursuant to a procedure that would (or would not) qualify under 18 U.S.C. 922(t) as a NICS alternative permit. For example, a state might exempt a law enforcement officer or judge from the background check requirement when obtaining a concealed weapons license. *See, e.g.*, Fla. Stat. 790.06(5)(b); Del. Code Ann. tit. 11 sec. 1448D (c)(1), (h); Md. Pub. Safety Code sec. 5-305(g) (exempting employees of armored car companies). While the state-issued permit for that law enforcement officer or judge would be valid under state law for its dedicated purposes, it would not qualify as a NICS alternate permit because the state law does not require the licensing official to verify that the permit holder may lawfully possess a firearm.

In these cases, the proposed amendments to the regulation make clear that ATF will only recognize the subset of permits that meet the requirements under § 478.102(d), provided that those permits are distinguishable from other permits that do not qualify. This formalizes ATF's prior practice. In Alaska, for example, a person who wants his concealed handgun permit to exempt him from the NICS background check requirement must fill out a supplemental application form. Alaska will mark that subset of concealed handgun permits as "NICS Exempt." Although ATF does not recognize all Alaska concealed handgun permits as Brady alternatives, ATF has recognized the subset labeled "NICS Exempt." *See* Alaska Stat. 18.65.700; ATF Open Letter to All Alaska Federal Firearms Licensees (Oct. 17, 2005) (Rescinded).⁷ States that do not conduct background checks on certain categories of individuals could also separately label those permits (e.g., "Not NICS Exempt" or "Judicial/Peace Officer Concealed Weapon License").

The proposed rule would also amend the section heading of 27 CFR 478.102 to remove "on or after November 30, 1998" because that was more than 25 years ago and the date trigger is no longer needed. Finally, the proposed rule would add a paragraph heading to § 478.102(e) to make it consistent with the other paragraphs and to be in accord with CFR drafting requirements.

III. Statutory and Executive Order Review

A. Executive Orders 12866 and 13563

Executive Order 12866 (Regulatory Planning and Review) directs agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits.

Executive Order 13563 (Improving Regulation and Regulatory Review) emphasizes the importance of agencies quantifying both costs and benefits, reducing costs, harmonizing

⁷ ATF, Open Letter to All Alaska Federal Firearms Licensees (Oct., 17, 2005) (rescinded), <https://www.atf.gov/file/84456/download> [<https://perma.cc/SQ4F-MBH4>].

rules, and promoting public flexibility.

This rule proposes to amend 27 CFR 478.102(d) to clarify what information ATF considers in assessing whether a state's firearms permit qualifies as an alternative to the NICS background check requirement and what information an authorized government official is to consider when verifying that a given transferee possessing a firearm does not violate law. These clarifications will reduce confusion that has occurred in recent years due to different state processes, and they do not impose any costs or quantitative benefits.

The Office of Management and Budget ("OMB") has determined that this proposed rule would not be a "significant regulatory action" under Executive Order 12866. Therefore, it did not review this rule.

B. Executive Order 14192

Executive Order 14192 (Unleashing Prosperity Through Deregulation) requires an agency, unless prohibited by law, to identify at least ten existing regulations to be repealed or revised when the agency publicly proposes for notice and comment or otherwise promulgates a new regulation that qualifies as an Executive Order 14192 regulatory action (defined in OMB Memorandum M-25-20 as a final significant regulatory action as defined in section 3(f) of Executive Order 12866 that imposes total costs greater than zero). In furtherance of this requirement, section 3(c) of Executive Order 14192 requires that any new incremental costs associated with such new regulations must, to the extent permitted by law, also be offset by eliminating existing costs associated with at least ten prior regulations. However, this proposed rule would not be an Executive Order 14192 regulatory action because it is not a significant regulatory action as defined by Executive Order 12866 and it would not impose total costs greater than zero. This rule would clarify what information ATF considers in assessing whether a state's firearms permit qualifies as an alternative to the NICS background check requirement and what information an authorized government official is to consider when verifying that a given transferee possessing a firearm does not violate law. In

addition, ATF expects this rule, if finalized as proposed, to qualify as an Executive Order 14192 deregulatory action (defined OMB Memorandum M-25-20 as a final action that imposes total costs less than zero).

C. Executive Order 14294

Executive Order 14294 (Fighting Overcriminalization in Federal Regulations) requires agencies promulgating regulations with criminal regulatory offenses potentially subject to criminal enforcement to explicitly describe the conduct subject to criminal enforcement, the authorizing statutes, and the mens rea standard applicable to each element of those offenses. This proposed rule would not create a criminal regulatory offense and is thus exempt from Executive Order 14294 requirements.

D. Executive Order 13132

This proposed rule will not have substantial direct effects on the states, the relationship between the federal government and the states, or the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132 (Federalism), the Director has determined that this proposed rule would not impose substantial direct compliance costs on state and local governments, preempt state law, or meaningfully implicate federalism. It thus does not warrant preparing a federalism summary impact statement.

E. 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).

F. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (“RFA”), 5 U.S.C. 601–612, agencies are required to conduct a regulatory flexibility analysis of any proposed rule subject to notice-and-comment rulemaking requirements unless the agency head certifies, including a statement of factual basis, that the proposed rule would not have a significant economic

impact on a substantial number of small entities. Small entities include certain small businesses, small not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Director certifies, after consideration, that this proposed rule would not have a significant economic impact on a substantial number of small entities. This proposed rule merely clarifies information so as to reduce confusion that has occurred in recent years due to different state processes. This rule is deregulatory and would not impose any additional costs.

G. Unfunded Mandates Reform Act of 1995

This proposed rule does not include a federal mandate that might 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, the ATF has determined that no actions are necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

H. Paperwork Reduction Act of 1995

Under the Paperwork Reduction Act of 1995 (“PRA”), 44 U.S.C. 3501-3521, agencies are required to submit to OMB, for review and approval, any information collection requirements a rule creates or any impacts it has on existing information collections. An information collection includes any reporting, record-keeping, monitoring, posting, labeling, or other similar actions an agency requires of the public. *See* 5 CFR 1320.3(c). This proposed rule involves one existing information collection under the PRA. The information collection associated with this proposed rule is OMB control number 1140-0020: Firearms Transaction Record, which includes ATF Form 5300.9 (“Form 4473”). Form 4473 is completed when an FFL transfers a firearm to a non-licensee. Although this rule is associated with the existing information collection, the proposed changes would not add or change the burden or requirements imposed on the respondent beyond existing, OMB-approved requirements.

I. Congressional Review Act

This proposed rule would not be a major rule as defined by the Congressional Review Act, 5 U.S.C. 804.

IV. Public Participation

A. Comments sought

ATF requests comments on the proposed rule from all interested persons. ATF specifically requests comments on the clarity of this proposed rule and how it may be made easier to understand. In addition, ATF requests comments on the costs or benefits of the proposed rule and on the appropriate methodology and data for calculating those costs and benefits.

All comments must reference this document's RIN 1140-AA85 and, if handwritten, must be legible. If submitting by mail, you must also include your complete first and last name and contact information. If submitting a comment through the federal e-rulemaking portal, as described in section IV.C of this preamble, you should carefully review and follow the website's instructions on submitting comments. Whether you submit comments online or by mail, ATF will post them online. If submitting online as an individual, any information you provide in the online fields for city, state, zip code, and phone will not be publicly viewable when ATF publishes the comment on <https://www.regulations.gov>. However, if you include such personally identifiable information ("PII") in the body of your online comment, it may be posted and viewable online. Similarly, if you submit a written comment with PII in the body of the comment, it may be posted and viewable online. Therefore, all commenters should review section IV.B of this preamble, "Confidentiality," regarding how to submit PII if you do not want it published online. ATF may not consider, or respond to, comments that do not meet these requirements or comments containing excessive profanity. ATF will retain comments containing excessive profanity as part of this rulemaking's administrative record but will not publish such documents on <https://www.regulations.gov>. ATF will treat all

comments as originals and will not acknowledge receipt of comments. In addition, if ATF cannot read your comment due to handwriting or 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.

B. Confidentiality

ATF will make all comments meeting the requirements of this section, whether submitted electronically or on paper, except as provided below, available for public viewing on the internet through the federal e-rulemaking portal, and subject to the Freedom of Information Act (5 U.S.C. 552). Commenters who submit by mail and who do not want their name or other PII posted on the internet should submit their comments with a separate cover sheet containing their PII. The separate cover sheet should be marked with “CUI//PRVCY” at the top to identify it as protected PII under the Privacy Act. Both the cover sheet and comment must reference this RIN 1140-AA85. For comments submitted by mail, information contained on the cover sheet will not appear when posted on the internet, but any PII that appears within the body of a comment will not be redacted by ATF and may appear on the internet. Similarly, commenters who submit through the federal e-rulemaking portal and who do not want any of their PII posted on the internet should omit such PII from the body of their comment and in any uploaded attachments. However, PII entered into the online fields designated for name, email, and other contact information will not be posted or viewable online.

A commenter may submit to ATF information identified as proprietary or confidential business information by mail. To request that ATF handle this information as controlled unclassified information (“CUI”), the commenter must place any portion of a comment that is proprietary or confidential business information under law or regulation on pages separate from the balance of the comment, with each page prominently marked

“CUI/PROPIN” at the top of the page.

ATF will not make proprietary or confidential business information submitted in compliance with these instructions available when disclosing the comments that it receives but will disclose that the commenter provided proprietary or confidential business information that ATF is holding in a separate file to which the public does not have access. If ATF receives a request to examine or copy this information, it will treat it as any other request under the Freedom of Information Act (5 U.S.C. 552). In addition, ATF will disclose such proprietary or confidential business information to the extent required by other legal process.

C. Submitting comments

Submit comments using either of the two methods described below (but do not submit the same comment multiple times or by more than one method). Hand-delivered comments will not be accepted.

- *Federal e-rulemaking portal:* ATF recommends that you submit your comments to ATF via the federal e-rulemaking portal at <https://www.regulations.gov> and follow the instructions. 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 is provided 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, include the commenter’s first and last name and full mailing address, and may be of any length. See also section IV.B of this preamble, “Confidentiality.”

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 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 in response to it are available through the federal e-rulemaking portal, at <https://www.regulations.gov> (search for RIN 1140-AA85).

List of subjects in 27 CFR part 478

Administrative practice and procedure, Arms and munitions, Exports, Freight, Imports, Intergovernmental relations, Law enforcement officers, Military personnel, Penalties, Reporting and record-keeping requirements, Research, Seizures and forfeitures, Transportation.

For the reasons discussed in the preamble, ATF proposes to amend 27 CFR part 478 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, 921–931; 44 U.S.C. 3504(h).

2. Amend § 478.102 by:

- a. Revising the section heading and paragraph (d); and
- b. Adding a new paragraph heading to paragraph (e) and a new paragraph (f).

The revisions and additions read as follows:

§ 478.102 Firearms sales or deliveries.

* * * * *

(d) *Exceptions to NICS check.* The provisions of paragraph (a) of this section do not apply if —

(1) The transferee has presented to the licensee a valid and unexpired permit (or license) that —

(i) Allows the transferee to possess, acquire, or carry a firearm;

(ii) Was issued not more than five years earlier by the state in which the transfer is to take place; and

(iii) The law of the state provides that such a permit is to be issued only after an authorized government official has verified that the information available to such official does not indicate that the transferee possessing the firearm would be in violation of any applicable law.

(2) The firearm is subject to the provisions of the National Firearms Act and has been approved for transfer under 27 CFR part 479; or

(3) The licensee has applied for certification, in accordance with the provisions of § 478.150, and the Director has certified that compliance with paragraph (a)(1) of this section is impracticable.

(e) *Documenting an exception to NICS check.* * * *

(f) *Clarifications on exceptions to NICS check.* For purposes of paragraph (d) of this section:

(1) A permit (including a nominally “lifetime” permit or a permit nominally issued for more than five years) is deemed issued within the previous five years if:

(i) The law of the state requires that an authorized government official verify or reverify the information described in paragraph (d)(1)(iii) within the previous five years;

(ii) The authorized government official issuing the permit has complied with that legal requirement; and

(iii) The person possessing the qualifying permit presents documentation to a licensee prior to a firearm transfer that is from the authorized issuing government authority and establishes the permit’s verification or reverification date.

(2) The phrase in paragraph (d)(1)(iii) of this section, “only after an authorized government official has verified that the information available to such official,” means that

the state law provides that an official reviews information they received as a part of a National Instant Criminal Background Check System (NICS) check, or equivalent check, and determines, based on the information received and any other information readily accessible to that official, that the transferee possessing firearms would not be a violation of law, except that —

(i) If the Federal Bureau of Investigation does not make NICS available to the authorized government official who issues the license, the official verifies all the information that is otherwise available to the official; and

(ii) “Information available to such official” does not include information that can be obtained only through extraordinary effort, expense, or means.

(3) In assessing whether a state firearms permit qualifies under the exception codified at 18 U.S.C. 922(t)(3), ATF considers the law of the state, which includes state statutes and common law, state regulations having the force and effect of law, precedential judicial opinions, and any opinions of the executive branch that are binding and have the force and effect of law. The mere fact that permits may have been erroneously granted does not, by itself, establish the law of the state.

(4) Where a state has multiple procedures to issue a permit, only some of which qualify under 18 U.S.C. 922(t), a person may use a permit issued pursuant to a procedure qualifying under 18 U.S.C. 922(t), provided the qualifying permit has marks or labeling sufficient to distinguish it from other permits issued pursuant to non-qualifying procedures.

Robert Cekada,
Director.

[FR Doc. 2026-08918 Filed: 5/5/2026 8:45 am; Publication Date: 5/6/2026]