



## DEPARTMENT OF JUSTICE

### Bureau of Alcohol, Tobacco, Firearms, and Explosives

#### 27 CFR part 479

[Docket No. ATF-2026-0331; ATF No.2025R-20P]

RIN 1140-AA76

#### Clarifying Special (Occupational) Tax Payments Per Business Activity

**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 that a person engaged in the business of dealing, importing, or manufacturing firearms regulated under the National Firearms Act must pay a special (occupational) tax (“SOT”) for each business activity conducted at the same location. However, they are not required to pay a tax for each license they have at that location if the licenses are for the same type of business activity. The rule proposes clarifying that licensees pay one SOT per business activity (manufacturing, importing, or dealing).

**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 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. Commenters should be aware that the federal e-rulemaking portal 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-AA76, 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: ATF 1140-AA76.*

*Instructions:* All submissions must include the agency name and number (RIN 1140-AA76) 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 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](mailto: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 National Firearms Act (“NFA”), as amended, 26 U.S.C. chapter 53.<sup>1</sup> Congress and the Attorney General have delegated the responsibility for administering and enforcing the NFA 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).<sup>2</sup> Accordingly, the Department and ATF have promulgated regulations to implement the NFA in 27 CFR part 479.

Firearms subject to NFA provisions include machine guns, a shotgun having a barrel or barrels of less than 18 inches in length, a rifle having a barrel or barrels of less than 16 inches in length, a weapon made from a rifle, a weapon made from a shotgun, silencers, destructive devices, and any other weapon as defined by the NFA (“NFA firearms”). 26 U.S.C. 5845(a).

Section 5801(a) requires that every importer, manufacturer, and dealer in firearms pay a special (occupational) tax (“SOT”) for each place of business on or before July 1 of each year. Importers and manufacturers generally pay \$1,000 a year or a fraction thereof,<sup>3</sup> and dealers pay \$500 a year or a fraction thereof. Federal regulations at 27 CFR 479.31 do not permit the SOT to be prorated. For purposes of the NFA, a “dealer” is any person, who is not also a manufacturer or importer, “engaged in the business of selling, renting, leasing, or loaning firearms, and includes pawnbrokers who accept firearms as collateral for loans.” 26 U.S.C. 5845(k). An “importer” is “any person who is engaged in the business of importing or bringing firearms into the United States,” 26 U.S.C. 5845(l), and a “manufacturer” is “any person who is engaged in the

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<sup>1</sup> Some NFA 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.

<sup>2</sup> 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 NFA, Gun Control Act, 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.

<sup>3</sup> Under certain circumstances, an importer or manufacturer can pay a reduced rate. *See* 27 CFR 479.32a.

business of manufacturing firearms.” 26 U.S.C. 5845(m).

Regulations implementing 26 U.S.C. 5801 are set forth in 27 CFR part 479, subpart D - Special (Occupational) Tax. The regulations provide that, if more than one “business taxable” under section 5801 (hereinafter “taxable business” for easier reading) is carried on at the same location during a taxable year, the licensee, generally recognized by their IRS-issued individual employer identification number, must pay the SOT imposed on each such business. 27 CFR 479.39. For example, if the licensee engages in the business of manufacturing NFA firearms, they must pay a SOT for the manufacturing business. If, at the same business premises, they also engage in the business of importing NFA firearms, they must also pay a SOT for the importing business, therefore paying two SOTs for business activities at that premises. However, this regulatory provision does not require a qualified<sup>4</sup> manufacturer or importer to pay a SOT for dealing at the same premises if such manufacturer or importer also engages in business as a dealer. *Id.* In other words, manufacturers can also deal in firearms while paying a SOT only for the manufacturing business, and the same for importers. But a qualified dealer is not entitled to engage in business as a manufacturer or importer without paying a SOT for the manufacturing or importing business. *Id.* The regulations do not authorize a qualified importer to engage in the business of manufacturing without also becoming a qualified manufacturer. *See* 27 CFR part 479, subpart D.

ATF realizes the existing regulations regarding SOT are complex. The relationship between licenses and taxable business activities is also complicated because each person engaging in the business of manufacturing, importing, or dealing in firearms must also have a license under the Gun Control Act (“GCA”) licensing scheme, which requires different types of licenses based on the type of item.<sup>5</sup> Licensees that engage in one or more of these licensed

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<sup>4</sup> A manufacturer, importer, or dealer is “qualified” under the NFA if they have paid the SOT for that business activity.

<sup>5</sup> ATF.gov, *Types of Federal Firearms Licenses (FFL)*, <https://www.atf.gov/resource-center/infographics/types-federal-firearms-licensees-ffls> [ <https://perma.cc/LH8M-4M8N>].

business activities and handle NFA firearms must both obtain the license and pay the appropriate NFA SOT. However, the relationship is further complicated by the fact that, unlike the NFA, licenses issued under the GCA distinguish between sub-types of manufacturing and importing, such as manufacturing firearms (Type 07) and manufacturing destructive devices (Type 10) or importing firearms (Type 08) and importing destructive devices (Type 11). Licensees may have more than one of these types of licenses for business at a given premises, but this licensing scheme is more divided than the taxable business divisions for SOT payments. Essentially, while there are three taxable business activities under the NFA, seven of the nine licenses under the GCA fall within those three taxable activities.<sup>6</sup> People have been confused about whether they must pay a SOT for each such GCA license (which, if it were the case, would treat them as seven taxable business activities).

In addition, while manufacturers must obtain a GCA manufacturing license for the type of firearms they manufacture, if they also deal in those same types of firearms, they do not have to obtain a separate dealer's license. The same is true for licensed importers who deal in the same types of firearms they import. But if licensed manufacturers or importers deal in a different type of firearm from those they manufacture or import, they must obtain a separate dealer's license for the different type of firearms. For example, a Type 07 manufacturer of NFA firearms who also wants to deal in destructive devices, would be required to first obtain a Type 09 dealer in destructive devices license, then obtain the separate SOT, as destructive devices are a specific type of NFA item. In addition, dealers who are not manufacturers or importers must obtain separate dealer's licenses for the different types of firearms in which they deal.

ATF previously advised federal firearms licensees ("FFLs" or "licensees") in a June 2021

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<sup>6</sup> Of the nine GCA licenses, there are three types of dealer licenses: Type 01 for firearms, Type 02 for pawnbrokers, and Type 09 for destructive devices. In addition, there are two types of manufacturer licenses, noted in the text above: Type 07 for firearms, and Type 10 for destructive devices. And there are two types of importer licenses, also noted in the text: Type 08 for firearms and Type 11 for destructive devices. See ATF.gov, *Federal Firearms Licenses*, <https://www.atf.gov/firearms/federal-firearms-licenses> for details. The other two GCA licenses, Type 03 for collectors of curios and relics and Type 06 for ammunition, do not fall within the categories of NFA dealer, manufacturer, or importer taxable business activities, and are thus not relevant to this rule.

FFL Newsletter that a person who maintains a manufacturer's and a dealer's license at the same business premises and engages in the business of NFA firearms from both licenses would need to pay a separate SOT for each license under the NFA (a SOT for manufacturing and a SOT for dealing).<sup>7</sup> In the newsletter, ATF noted that 27 CFR 479.39 permits a qualified manufacturer of NFA firearms to also deal in NFA firearms. As such, "the only exception to paying SOT for every business activity carried on at the same location is when a manufacturer or importer also engages in business as a dealer on the qualified premises."<sup>8</sup> However, the newsletter clarified that a manufacturer that holds two separate licenses (manufacturer and dealer) would need to pay SOT for both the manufacturer and dealer licenses.<sup>9</sup> Similarly, an importer that holds two licenses (importer and dealer) would need to pay SOT for both the importer and dealer licenses.<sup>10</sup> In other words, the manufacturer is not required to obtain a separate license for dealing in the same type of firearms they manufacture at the same premises, but if they do obtain a separate dealer's license (for example, they decide to deal in firearms other than the type they manufacture), they must pay a SOT for manufacturing and for dealing. The same holds true for an importer who also obtains a separate dealer's license.

## **II. Proposed Rule**

This rule proposes to amend 27 CFR 479.39 by clarifying that licensees conducting business involving NFA firearms pay the SOT one time during the taxable year for each taxable business under 26 U.S.C. 5801, regardless of how many licenses the FFL has. As mentioned above, the NFA requires a person to pay the SOT for every taxable business conducted at the same business premises during a taxable year. 26 U.S.C. 5801(a). A taxable business is one of three distinct types of taxable NFA business activities conducted by a person at a business

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<sup>7</sup> ATF, *Special Occupational Tax Requirements – Business Locations*, FFL Newsletter at 10–11 (June 2021), <https://www.atf.gov/firearms/docs/newsletter/federal-firearms-licensee-ffl-newsletter-june-2021/download> [<https://perma.cc/9BGZ-DHE8>].

<sup>8</sup> *Id.* at 10.

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

premises — importing, manufacturing, or dealing NFA firearms.<sup>11</sup> The NFA regulations allow a person to engage in more than one taxable business at the same business premises, provided they pay SOT on “each such business.” 27 CFR 479.39. As an example, an FFL importing and manufacturing NFA firearms at the same business premises is engaged in two separate types of NFA business activities or taxable businesses. Thus, the FFL must submit a SOT payment for each taxable business (i.e., a SOT payment to import NFA firearms and a SOT payment to manufacture NFA firearms), in order to engage in both activities at the same business premises. However, the NFA does not further divide these taxable business activities — importing, manufacturing, dealing — into more specific business activities, nor does it align with the licensing scheme under the GCA.

The NFA statute and regulation clearly provide that the SOT payments required to engage in NFA business activity are “for each place of business,” 26 U.S.C. 5801(a), and for each taxable business taking place at that business premises, 27 CFR 479.39. The NFA requires SOT payment based on the three taxable business activities listed above. Therefore, the relevant inquiry is not the number of licenses used to conduct the NFA business activity. Rather, it is whether the GCA licenses indicate that an individual engages in the business of the taxable activity (i.e., importing, dealing, or manufacturing).

For example, Type 10 (Manufacturer of Destructive Devices, Ammunition for Destructive Devices, or Armor-Piercing Ammunition) and Type 07 (Manufacturer of Firearms Other Than Destructive Devices) licenses under the GCA are of the same “type” of NFA business activity because both are manufacturing licenses. However, the manufacturing activity sub-type authorized under each license differs. The Type 10 license authorizes the person to manufacture destructive devices, and the Type 07 license authorizes them to manufacture firearms. Nevertheless, it is clear from the NFA that the licensee must make only one SOT

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<sup>11</sup> 26 U.S.C. 5801(a): *See also* ATF, *When must firearms special (occupational) taxes be paid and how much are the taxes?*, <https://www.atf.gov/firearms/qa/when-must-firearms-special-occupational-taxes-be-paid-and-how-much-are-taxes> [<https://perma.cc/3BZU-YUBA>].

payment for the overall NFA manufacturing business activity because manufacturing is the sole NFA taxable business occurring. In other words, the person does not need to make two SOT payments for manufacturing activity merely because the person holds two licenses for different manufacturing sub-types (i.e., Type 10 and Type 07). The person would obtain two licenses, Type 07 and Type 10, authorizing them to manufacture two types of NFA firearms, but would pay one Class 2 SOT (Manufacturing NFA firearms) that would cover both.

Moreover, as permitted under the statute and regulation, firearms manufacturers can deal in firearms without obtaining a separate Type 01 dealer license at the same business premises because the GCA licensing scheme allows licensed manufacturers and importers to also deal in the same type of firearms they manufacture or import at the same premises without obtaining a separate dealer's license. In this scenario, the applicable SOT would still be a Class 2 SOT (Manufacturing NFA firearms), and the licensee would still pay only one SOT, because the Class 2 SOT also allows a manufacturer to deal in NFA firearms without paying a separate SOT for dealing (the Class 1 SOT (Importing NFA firearms)). Thus, the manufacturer would have two licenses, Types 07 and 10, and pay one Class 2 SOT, covering manufacturing both NFA firearms and destructive devices, and dealing in NFA firearms, at the same business premises.

However, if the licensee also imports firearms at the same premises, they would have to also obtain a Type 08 license (Importer of Firearms Other than Destructive Devices or Ammunition for Firearms Other than Destructive Devices, or Ammunition Other than Armor-Piercing Ammunition). In addition, they would have to pay a second SOT because importing is a different NFA taxable business activity. In this scenario, the licensee would have three licenses (Types 07, 08, and 10), engage in three taxable NFA business activities (manufacturing, importing, and dealing in the same type of firearms they manufacture or import), but would pay only two SOTs (a Class 2 SOT for NFA manufacturing and a Class 1 SOT NFA importing) because the license types do not affect the SOT and because dealing would be included under both the manufacturing and importing SOTs. However, manufacturers or importers that choose

to engage in the business of dealing in firearms that are not of the same type as those they manufacture, or import must obtain a dealer's license. If those other types of firearms are NFA firearms, the separate dealer's license means they hold themselves out as dealers in NFA firearms and they thus must pay a separate occupational tax for the business of dealing. That would not be affected by this rule if the licensee obtains only one type of dealer's license. This proposed rule would impact only manufacturers, importers, and dealers who maintain two or more manufacturer, importer, or dealer licenses relating to NFA firearms at the same premises (e.g., Types 07 and 10 at the same business premises; Types 08 and 11 at the same business premises; or Types 01 (for firearms) and 09 (for destructive devices) dealer's licenses at the same premises) because it would clarify that they would need to pay only one SOT for all manufacturing licenses combined, one SOT for all importing licenses combined, and one SOT for all dealing licenses combined.

ATF proposes clarifying § 479.39 to address the source of confusion about whether a SOT is required for each license a person has at the same business premises. ATF proposes amending 27 CFR 479.39 by clarifying that only one SOT payment is required for each taxable business at the same location (notwithstanding the number of licenses under the GCA that they need to conduct that taxable business activity). The proposed clarification to § 479.39 does not supersede the analysis in ATF's June 2021 FFL Newsletter.<sup>12</sup> While an FFL who manufactures or imports firearms does not need a separate license to deal in those same firearms, some FFLs choose to also acquire a separate dealer's license for other types of firearms. If an FFL chooses to use a separate dealer's license to deal NFA firearms, then that FFL will also need to pay the SOT on the dealer's license because it is a separate taxable business under the NFA (even if they can lawfully engage in this activity under the manufacturer's license they maintain).

In addition, the current provision already provides that a qualified manufacturer who engages in business as an importer must also qualify as an importer. The proposed rule would

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<sup>12</sup> See footnote 7, *supra*.

clarify that a qualified importer engaged in the business of manufacturing must also qualify as a manufacturer.

### **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 rules, and promoting public flexibility.

This rule proposes to amend 27 CFR part 479 to clarify the number of SOTs that licensees must pay for each taxable business conducted at the same business premises during a taxable year. The proposed rule clarifies that a person needs only one SOT per taxable business (importing, manufacturing, or dealing) at a licensee's business premises, regardless of the number of GCA licenses they have to carry out that one business activity.

The Office of Management and Budget ("OMB") has determined that this rule would not be a "significant regulatory action" under Executive Order 12866. Therefore, it did not review this rule. ATF provides the following analysis to comply with Executive Orders 12866 and 13563.

#### ***1. Need statement***

The need for this regulatory action is to reduce the overall burden on businesses, particularly small businesses, without any impact to public safety. As currently written, the regulation is confusing and some licensees pay for more SOTs than required. Because multiple license types are available for each business activity — manufacturing, importing, and dealing — persons who manufacture, import, or deal in NFA firearms would be affected by this proposed rule.

## 2. Transfers

Under the existing regulations, licensees have been paying for more SOTs than required. Manufacturer and importer FFLs generally must pay a \$1,000 or \$500 SOT per NFA taxable manufacturing business or importing business at a given business premises, depending on class status, and dealer FFLs pay a \$500 SOT for the dealing taxable business if they obtain a dealer's license. A single SOT covers all licenses the FFL has at one location for a specific taxable business activity. For example, a licensee that has two different manufacturing licenses, such as a Type 07 for manufacturing firearms and a Type 10 for manufacturing destructive devices, would pay only one SOT for manufacturing. The manufacturer would also be able to deal in NFA firearms without paying a separate SOT, as long as they did not have a separate dealer's license. Similarly, a licensee with a Type 08 license to import firearms and a Type 11 license to import destructive devices would also pay one SOT, for the importing taxable business activity. This licensed importer would also be able to deal in NFA firearms without having to pay a second SOT, as long as they did not have a separate dealer's license. However, many licensees are currently paying for two manufacturing SOTs, two importing SOTs, or, at a lower frequency, two dealing SOTs.<sup>13</sup> Assuming a licensee maintaining multiple licenses is paying twice as many SOTs as required for a taxable business activity, this proposed rule would result in affected licensees reducing the number of SOTs they pay by half.

Based on 2025 data from ATF's National Firearms Act Division, there are approximately 496 FFLs with multiple SOTs of the same business activity at the same location. Because a SOT is either \$500 or \$1,000, depending on class, ATF used a weighted average by SOT class to determine the estimated savings this rule would have on the overall industry. Based on information gathered from ATF's National Firearms Act Division, 13 percent of all active FFLs with SOT status pay a SOT of \$1,000 and 87 percent pay \$500. The weighted average is lower than a midpoint (which would be 750) due to the population of dealers who pay only \$500,

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<sup>13</sup> See footnote 5, *supra*, for a list of the types of licenses.

making the weighted average \$565.<sup>14,15</sup> As a result, the cost savings from avoided SOTs would total \$280,240 annually.<sup>16</sup> Therefore, the annual transfer, representing savings for affected FFLs under this rulemaking and lost revenue for the government, would be \$280,240, or nearly \$3 million over the course of ten years.

### **3. Benefits**

The proposed rule would result in additional benefits to licensees because, by paying fewer SOTs, they would also reduce the amount of time they would spend completing and submitting SOT returns.<sup>17</sup> It takes licensees 15 minutes (0.25 hours) to complete and submit ATF Form 5630.7, Special Tax Registration and Return National Firearms Act (NFA) form (now changing to NFA Special Occupational Tax (SOT) Registration/Return) (“Form 5630.7”). For purposes of this analysis, ATF assumes that a retail salesperson at the FFL would complete and submit the return. According to the Bureau of Labor Statistics (“BLS”), an FFL retail salesperson handles these tasks and is paid an hourly wage rate of \$17.64 per hour.<sup>18</sup> To account for fringe employment benefits such as insurance, ATF determined the average load rate based on BLS’s calculated national hourly compensation (salaries/wages plus paid benefits) for all private-sector occupations (average of \$44.20 for 2024)<sup>19</sup> divided by the national average hourly wages and salaries without benefits (average of \$31.95 for 2024),<sup>20</sup> making a load rate of 1.42.<sup>21</sup> ATF then applied this load rate to the FFL retail salesperson wage to calculate their total compensation. Multiplying BLS’s estimated hourly wage rate for an FFL salesperson (\$17.64) by the load rate of 1.42, ATF estimated that an FFL would save \$25.05 in loaded monetized time per hour under

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<sup>14</sup> While Class 1 and 2 SOTs are \$1,000 for importers and manufacturers, taxes assessed may be \$500 (or the same amount as Class 3 dealers) depending on the overall revenue of the FFL.

<sup>15</sup> \$565 weighted average SOT = (\$500 reduced/dealer SOT \* 87 percent) + (\$1,000 SOT \* 13 percent)

<sup>16</sup> \$372,000 annual savings = \$750 savings per FFL \* 496 FFLs with multiple licenses.

<sup>17</sup> NFA Special Occupational Tax (SOT) Registration/Return, ATF Form 5630.7. NFA licensees use this form to pay their SOT and register as a SOT payer.

<sup>18</sup> U.S. Bureau of Labor Statistics, *Occupational Employment and Wages, May 2023*, for 41-2031 Retail Salespersons, <https://www.bls.gov/oes/2023/may/oes412031.htm> [<https://perma.cc/V5T8-T455>].

<sup>19</sup> U.S. Bureau of Labor Statistics, *Total compensation cost per hour worked for private industry workers (2023–2025)*, <https://data.bls.gov/dataViewer/view/timeseries/CMU201000000000D> [<https://perma.cc/T2ZL-2UUB>].

<sup>20</sup> *Id.*

<sup>21</sup> 1.4 load rate = \$44.20 total hourly compensation / 31.95 hourly wages and salaries.

this rule. Applied to the 496 affected FFLs, this 15-minute time burden would result in 124 hours of saved time annually for the affected FFLs in total. At the \$25.05 wage rate, the monetized value of the saved time would be \$3,106 per year, or \$31,062 over ten years.

#### ***4. Costs***

This proposed rule would not result in quantifiable costs. The proposed changes might be thought to result in ATF losing information about FFLs also manufacturing or importing other types of firearms by no longer receiving returns (which accompany the SOT payments) for other manufacturing or importing types. However, in reality, the information gleaned from SOT returns submitted by the same licensee on the same taxable business at the same location is duplicative for ATF purposes. ATF notes that the public savings arising from this proposed rule's reduced SOT payments would be a transfer from the government to the public, as discussed in section A.2 of this part.

#### ***5. Regulatory alternatives***

Alternative 1. Maintaining the status quo (no action alternative).

Under current regulations, many FFLs are confused about how many SOTs they must pay when they have multiple licenses for types of manufacturing, types of importing, and dealing. As a result, maintaining the status quo would allow this problem to continue. The results would be that this segment of the firearms industry would continue making double payments and expending twice the amount of time to complete the accompanying returns. The costs of maintaining the status quo would be equivalent to the savings identified in the sections above: \$280,240 in extra SOT payments per year, or nearly \$3 million over the course of ten years, and 124 hours of extra time annually for the affected FFLs in total. At the \$25.05 wage rate, the monetized value of the extra time would be \$3,106 per year, or \$31,062 over ten years.

Alternative 2. Rulemaking (proposed alternative).

This proposed rule would clarify existing regulations so that licensees would no longer be confused about how many SOTs they must pay. It would reduce the number of SOT payments

they make when they have multiple manufacturing or multiple importing licenses by half, thereby saving the affected population of licensees nearly \$3 million over the course of ten years, and saving them \$31,060 in monetized time burdens. It would create no risk to public safety and would not entail any additional costs or burdens to industry. This alternative was accepted because of the benefits accrued to the public.

### Alternative 3. Issuing guidance.

Under this alternative, the existing regulation would remain and would continue to be confusing to licensees. Although guidance might serve to alleviate some of that confusion, ATF has already issued some forms of guidance, such as the 2021 FFL newsletter, in which it has clarified the requirements for paying SOTs. However, the guidance has not resulted in the desired outcome. As the regulatory text would remain, ATF does not think this option would result in effective clarification for licensees. Guidance also does not have the same force and effect as a regulation, so this option would present a risk that courts would not accord it the same weight as the existing regulation. As a result, ATF rejected this alternative.

### *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 under 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

proposed rule would simply clarify that licensees do not have to pay for additional SOTs when they have multiple licenses for the same kind of business activity, thereby saving licensees approximately \$280,240 annually or nearly \$3 million over the course of ten years, as well as \$31,060 in monetized time burdens over ten years. In addition, ATF expects this rule, if finalized as proposed, to qualify as an Executive Order 14192 deregulatory action (defined by 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 would 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 the 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 because it would merely clarify that a person must pay the NFA-required SOT one time for every taxable business, thus reducing confusion and simplifying compliance. This proposed 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 would not significantly or uniquely affect small governments. Therefore, 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 would impact one existing information collection approved by OMB. The information collection is OMB control number 1140-0090: ATF Form 5630.7, Special Tax Registration and Return National Firearms Act (NFA) form (now changing to NFA Special Occupational Tax (SOT)

Registration/Return) (“Form 5630.7”). This proposed rule would clarify that applicants need pay only one SOT per taxable business activity occurring at the same business premises, thus reducing the number of FFLs who erroneously pay two SOTs for the same business activity. As a result of this change, the time burden for this collection would be reduced by 124 hours per year, if this proposed rule becomes final. ATF will provide more details about the information collection in any resulting final rule.

#### *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-AA76 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 identifying 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, and 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-AA76. 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 it will 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 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.”

## **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-AA76).

## **Severability**

Consistent with the Administrative Procedure Act, the issues raised in this proposed rule may be finalized, or not, independently of each other, after consideration of comments received. ATF has determined that this proposed rule implements and is fully consistent with governing law. However, in the event this proposed rule is finalized, if any provision of that rule, an amendment or revision made by that rule, or the application of such provision or amendment or revision to any person or circumstance, is held to be invalid or unenforceable by its terms, the remainder of that final rule, the amendments or revisions made by that rule, and application of the provisions of the rule to any person or circumstance shall not be affected and shall be construed so as to give them the maximum effect permitted by law.

## **List of subjects in 27 CFR part 479**

Administrative practice and procedure, Arms and munitions, Exports, Imports, Military personnel, Penalties, Reporting and record-keeping requirements, Seizures and forfeitures, Taxes, Transportation.

For the reasons discussed in the preamble, ATF proposes to amend 27 CFR part 479 as follows:

## **PART 479—MACHINE GUNS, DESTRUCTIVE DEVICES, AND CERTAIN OTHER FIREARMS**

1. The authority citation for 27 CFR part 479 continues to read as follows:

**Authority:** 26 U.S.C. 5801–5822; 26 U.S.C. 7801; 26 U.S.C. 7805.

2. Revise § 479.39 to read as follows:

## **§ 479.39 Engaging in more than one business at the same location.**

(a) If a person engages in more than one taxable business under 26 U.S.C. 5801 at the same location during a taxable year, the person must pay the special (occupational) tax imposed on each such taxable business.

(1) A taxable business is one of three distinct types of NFA business activity conducted by a person at a business premises: importing, manufacturing, or dealing in firearms regulated by this part.

(2) During a taxable year, a person must pay only once for each type of business activity conducted at the business premises (notwithstanding the number of licenses under the GCA that the person needs to conduct that taxable business activity).

### **Example 1 for paragraph (a)(2)**

A person obtains a Type 07 (to manufacture firearms other than destructive devices, etc) license and a Type 10 (to manufacture destructive devices, etc) license under the GCA and engages in both types of manufacturing activities for NFA firearms at the same business premises. Both licenses fall under the same NFA business activity because both are manufacturing licenses, and manufacturing is one of the three NFA taxable business activities. Therefore, the licensee must pay only one Class 2 SOT (manufacturing NFA firearms). The person does not need to make two SOT payments for manufacturing activity merely because the person holds two licenses for different manufacturing sub-types (i.e., Type 10 and Type 07).

### **Example 2 for paragraph (a)(2)**

The person in example 1 also engages in the business of dealing in NFA firearms at the same premises, but does not obtain a separate dealer license because the GCA licensing scheme allows licensed manufacturers to also deal in the same types of firearms they manufacture at the same premises without obtaining a separate dealer's license. The Class 2 SOT also allows a manufacturer to deal in NFA firearms without paying a separate SOT for dealing (the Class 1 SOT (importing NFA firearms) does the same for importing and dealing). Therefore, the manufacturer would have two licenses, Type 07 and 10, and pay one Class 2 SOT, covering manufacturing both NFA firearms and destructive devices, and dealing in NFA firearms, at the same business premises.

### **Example 3 for paragraph (a)(2)**

The person in example 2 decides to also obtain a Type 08 (to import firearms other than destructive devices, etc) license under the GCA. The person would have three licenses (Types 07, 08, and 10), engage in three taxable NFA business activities (manufacturing, importing, and dealing), but would pay only two SOTs (Class 1 for importing, and Class 2 for manufacturing); dealing would be included under both the manufacturing and importing SOTs. If the person also obtained a Type 11 license (to import destructive devices, etc), the result would be the same because both importing licenses would be covered by the Class 1 SOT, as would dealing in the imported items.

### **Example 4 for paragraph (a)(2)**

A person obtains a Type 10 (to manufacture destructive devices, etc) license under the GCA. Destructive devices are NFA firearms. This person thus pays a Class 2 SOT for manufacturing. The person also deals in destructive devices, but does not obtain a GCA Type 09

(to deal in destructive devices) license because this is the same type of firearms the person manufactures. The manufacturing licenses allow a licensee to also deal in the same type of firearms without a separate dealer's license, as do the importing licenses. The Class 2 SOT also allows a manufacturer to deal in NFA firearms without paying a separate SOT for dealing (the Class 1 SOT (importing NFA firearms) does the same for importing and dealing). However, later the person also decides to deal in NFA firearms other than destructive devices, but does not manufacture them. As a result, the person must obtain a Type 01 (to deal in firearms) license. The person now has two licenses, Type 07 for manufacturing and Type 01 for dealing, and must pay two SOTs (Class 2 for manufacturing and Class 3 for dealing).

Example 5 for paragraph (a)(2)

A person obtains a Type 10 license to manufacture NFA destructive devices. The person must therefore also pay a Class 2 SOT for manufacturing. The person also deals in the same destructive devices they manufacture, so does not obtain a dealer's license because the Type 10 license permits dealing in the destructive devices the person manufactures. Similarly, they do not pay a SOT for dealing because the Class 2 SOT permits dealing if the person does not have a separate dealer's license. However, later, the person decides to deal in NFA firearms and destructive devices at the same premises. The person would have three licenses, Type 10 (to manufacture destructive devices), Type 01 (to deal in firearms), and Type 09 (to deal in destructive devices), but the person would pay only two SOTs (Class 2 for manufacturing, and Class 3 for dealing) because both dealing licenses fall under the same NFA taxable business (dealing). The person does not need to make two SOT payments for dealing activity merely because the person holds two licenses for different dealing sub-types (i.e., Type 01 and Type 09).

(b) This section does not require a manufacturer or importer to also qualify as a dealer if such manufacturer or importer also engages in business on their qualified premises as a dealer (unless they obtain a separate dealer's license). However, a qualified manufacturer who engages in business as an importer must also qualify as an importer. Similarly, a qualified importer who engages in business as a manufacturer must also qualify as a manufacturer. Further, a qualified dealer is not entitled, merely by virtue of being a qualified dealer, to engage in business as a manufacturer or importer.

**Robert Cekada,**

*Director.*

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