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DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms, and Explosives

27 CFR part 479

[ATF No. 2025R-21F]

RIN 1140-AA79

Conforming Change for Approving a Making Application

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

ACTION: Final rule.

SUMMARY: The Bureau of Alcohol, Tobacco, Firearms, and Explosives (“ATF”) is amending Department of Justice (“Department”) regulations to require that a National Instant Criminal Background Check System background check be performed as part of the approval process to make a National Firearms Act (“NFA”) firearm. ATF already conducts such background checks as part of its processing and this amendment to the regulation simply ensures that the regulations addressing NFA processes are consistent with the statutory requirements.

DATES: This rule is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

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 National Firearms Act

(“NFA”), as amended, 26 U.S.C. chapter 53.¹ 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).² Accordingly, the Department and ATF have promulgated regulations to implement the NFA in 27 CFR part 479.

The regulations in 27 CFR part 479 contain procedural and substantive requirements for importing, making, exporting, transferring, taxing, identifying, registering, and dealing in machine guns, destructive devices, and certain other firearms. The NFA applies to machine guns, shotguns having a barrel or barrels of less than 18 inches in length, rifles having a barrel or barrels of less than 16 inches in length, weapons made from a rifle with an overall length of less than 26 inches or a barrel or barrels of less than 16 inches in length, weapons made from a shotgun with an overall length of less than 26 inches or a barrel or barrels of less than 18 inches in length, silencers, destructive devices, and any other weapon as defined by the NFA (“NFA firearm”). 26 U.S.C. 5845(a).

Pursuant to 26 U.S.C. 5822(e), no person can make an NFA firearm unless they have obtained the Attorney General’s approval to make and register the firearm and the application form shows such approval. Applications must be denied if making or possessing the firearm would place the person making the firearm in violation of law.

The regulations that implement 26 U.S.C. 5822(e) are found at 27 CFR 479.64 (“Procedure for approval of application”) and 479.65 (“Denial of application”). Section

¹ 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 final 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 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.

479.64 sets forth the process for ATF's approval of the application and makes clear that the maker cannot make the firearm until the application has been approved and returned to the applicant with the approved stamp. The regulation at 27 CFR 479.65 includes the requirement that an application must be denied if making or possessing the firearm would place the maker in violation of law. However, these provisions contain no explicit guidance on how applications to make an NFA firearm (i.e., ATF Form 5320.1, Application to Make and Register a Firearm ("Form 1")) are to be evaluated to ensure that, pursuant to the statute, making or possessing the firearm would not place the person making the firearm in violation of law.

Another NFA regulation in 27 CFR part 479 that implements application processing procedures contains explicit guidance that is absent from 27 CFR 479.64. The statute at 26 U.S.C. 5812, which pertains to transferring an NFA firearm, states that an application to transfer an NFA firearm "shall be denied if the transfer, receipt, or possession of the firearm would place the transferee in violation of law." The implementing regulation for 26 U.S.C. 5812 states, "[i]n addition to any other records checks that may be conducted to determine whether the transfer, receipt, or possession of a firearm would place the transferee in violation of law, the Director shall contact the National Instant Criminal Background Check System." 27 CFR 479.86.

While both statutory provisions (26 U.S.C. 5812 and 5822) require that the respective applications to either make or transfer an NFA firearm be denied if making or transferring the firearm would place the individual in violation of law, currently it is only 27 CFR 479.86 that explicitly states that a National Instant Criminal Background Check System ("NICS") background check must be performed as part of the application process, whereas 27 CFR 479.64 contains no such explicit requirement. Nevertheless, for both making and transfer applications, ATF currently contacts NICS to ensure individuals are not prohibited under the law from possessing a firearm.

II. Final Rule

To reflect current practice and track relevant language in § 479.86, this rule amends § 479.64 to require that a NICS background check be conducted by ATF as part of processing Form 1 applications to make an NFA firearm. This change is necessary to ensure that the Form 1 approval process meets the statutory requirement at 26 U.S.C. 5822 and is consistent across ATF regulations.

Section 479.86 currently provides: “An application, Form 4 (Firearms), to transfer a firearm shall be denied if the transfer, receipt, or possession of a firearm would place the transferee in violation of law. In addition to any other records checks that may be conducted to determine whether the transfer, receipt, or possession of a firearm would place the transferee in violation of law, the Director shall contact the [NICS].” Accordingly, ATF is simply adding to 27 CFR 479.64 language that parallels the language in § 479.86 used for transfer applications. The added language makes clear that an application to make a firearm, Form 1, must be denied if making or possessing the firearm would place the maker in violation of law, and that to make this determination ATF must contact NICS.

This final rule also makes a technical edit to correct the authority citation line for 27 CFR part 479 to read as: 26 U.S.C. 5801–5812; 26 U.S.C. 7801; 26 U.S.C. 7805, and makes minor technical edits to § 479.64 for plain writing purposes — primarily, breaking the long paragraph into smaller ones, updating form references, and removing passive voice.

III. Statutory and Executive Order Review

A. Administrative Procedure Act

This final rule relates to a matter of agency management or personnel and is a rule of agency organization, procedure, or practice. This rule does not alter any obligations on the public and simply adds to ATF’s regulations ATF’s longstanding practice of running a NICS background check to determine whether an applicant’s making or possession of an NFA firearm would place the maker in violation of the law. Accordingly, this rule is exempt from

the usual requirements of prior notice-and-comment and a 30-day delay in effective date. *See* 5 U.S.C. 553(a)(2), (b)(A), (d).

B. 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 final rule is amending 27 CFR 479.64 to require that ATF conduct a NICS background check as part of processing Form 1, the application to make an NFA firearm, to simply make the agency's regulations consistent with the current process. The Office of Management and Budget ("OMB") has determined that this rule is not a "significant regulatory action" under Executive Order 12866. Therefore, it did not review this rule. There are no changes in ATF standards or compliance requirements; therefore, ATF anticipates no costs or benefits accruing from this rule.

C. 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 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 rule is not an Executive Order 14192 regulatory action because it is not a significant regulatory action as defined by Executive Order 12866 and it does not impose total costs greater than zero.

D. 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 final rule does not create a criminal regulatory offense and is thus exempt from Executive Order 14294 requirements.

E. Executive Order 13132

This final 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 final rule does 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.

F. Executive Order 12988

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

G. 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 rule subject to notice-and-comment rulemaking requirements unless the agency head certifies, including a statement of the factual basis, that the rule will 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.

A regulatory flexibility analysis is not necessary because this rule is not required to undergo notice-and-comment rulemaking as described in section III.A of this preamble. Nevertheless, the Director certifies, after consideration, that this rule will not have a significant economic impact on a substantial number of small entities because it is only including in the regulations the existing practice of running a NICS background check on applicants who submit a Form 1 to make an NFA firearm.

H. Unfunded Mandates Reform Act of 1995

This final 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, ATF has determined that no actions are necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

I. 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 final rule involves one existing information collection under the PRA, which is OMB control number 1140-0011: Application to Make and Register NFA Firearm, which includes ATF Form 5320.1 (“Form 1”). However, because this rule changes only a requirement for the agency, it will not have an impact on this existing information collection.

J. Congressional Review Act

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

List of subjects in 27 CFR part 479

Administrative practice and procedure, Arms and munitions, Exports, Imports, Military personnel, Penalties, Reporting and recordkeeping requirements, Seizures and forfeitures, Taxes, Transportation

For the reasons discussed in the preamble, ATF amends 27 CFR part 479 as follows:

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

1. Revise the authority citation for 27 CFR part 479 to read as follows:

Authority: 26 U.S.C. 5801–5812; 26 U.S.C. 7801; 26 U.S.C. 7805.

2. Revise § 479.64 to read as follows:

§ 479.64 Action on making application.

(a) A person who intends to make a firearm must submit the application to make a firearm, Form 1, directly, in duplicate, to the Director in accordance with the instructions on the form. The Director will consider the application for approval or disapproval. If the application is approved, the Director will return the original to the applicant and retain the duplicate.

(b) In addition to any other records checks the Director may conduct to determine whether the applicant would be violating the law by making or possessing a firearm, the Director must contact the National Instant Criminal Background Check System.

(c) Upon receiving the approved application, the maker may make the described firearm. The maker must not, under any circumstances, make the firearm until the Director has approved and returned the application with the National Firearms Act stamp affixed.

(d) If the Director disapproves the application, the Director will return to the applicant the original Form 1 and the remittance submitted by the applicant and will include on the

form the reason for disapproving the application.

Robert Cekada,
Director

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