



## DEPARTMENT OF JUSTICE

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

27 CFR parts 478, 479, 555

[Docket No. ATF-2026-0010; ATF No. 2025R-33P]

RIN 1140-AA64

#### Selecting Biological Sex on ATF Forms

**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 make clear that when individuals complete ATF forms for firearms or explosives, they should select their biological sex under the question on “sex.”

**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-AA64, 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-AA64*.

*Instructions:* All submissions must include the agency name and number (RIN 1140-AA64) 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 Gun Control Act (“GCA”), as amended, and the National Firearms Act (“NFA”), as amended.<sup>1</sup> This includes the authority to promulgate regulations necessary to enforce the provisions of the GCA and NFA. *See* 18 U.S.C. 926(a); 26 U.S.C. 7801(a)(2)(A)(ii), 7805(a). Congress and the Attorney General have delegated the responsibility for administering and enforcing the GCA and 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); 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 implementing both the GCA and the NFA in 27 CFR parts 478, 479.

Title XI of the Organized Crime Control Act of 1970 (“OCCA”), Pub. L. 91–452, 84 Stat. 922 (1970), added chapter 40 (Importation, Manufacture, Distribution, and Storage of Explosive Materials) to title 18 of the U.S.C.<sup>3</sup> One of the stated purposes for title XI was to reduce the “hazard to persons and property arising from misuse and unsafe or insecure storage of explosive materials.” Pub. L. 91–452, sec. 1101, 84 Stat. at 952. The Attorney General is responsible for implementing title XI. *See* 18 U.S.C. 847. The Attorney General has delegated that responsibility to the 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). Regulations in 27 CFR part 555 implement title XI.

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<sup>1</sup> Some NFA and 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.

<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, 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.

<sup>3</sup> *See id.*

ATF's regulations at 27 CFR 478.21, 479.21, and 555.21 authorize the Director to prescribe forms required to implement the GCA, NFA, and federal explosives laws. For example, prior to making an over-the-counter transfer of a firearm to a non-licensee who resides in the same state as where a licensee is located, the licensee is required to obtain a ATF Form 5300.9, Firearms Transaction Record, ("Form 4473") "showing the transferee's name, sex, residence address . . . , and date and place of birth . . . ." 27 CFR 478.124(c). ATF added "sex" as a requirement in the regulations in 1998 as part of implementing the Brady Handgun Violence Prevention Act, Pub. L. 103-159 (1993). ATF understands the term "sex" as used in its regulations to mean the binary, biological distinctions between male and female. *See, e.g., Bibby v. Philadelphia Coca Cola Bottling Co.*, 85 F. Supp. 2d 509, 515-16 (E.D. Pa. 2000) (discussing the definition of "sex" as the difference between male and female by referring to a 1993 edition of the New Shorter Oxford English Dictionary).

On January 20, 2025, President Donald J. Trump issued Executive Order 14168, *Defending Women from Gender Ideology Extremism and Restoring Biological Truth to the Federal Government*, which stated that "'Sex' shall refer to an individual's immutable biological classification as either male or female. 'Sex' is not a synonym for and does not include the concept of 'gender identity.'" Thus, consistent with Executive Order 14168 and the ordinary meaning of the word "sex" as used in statutes and regulations, ATF proposes a rule to resolve any potential confusion on how to fill out ATF forms. The rule would make clear that ATF seeks biological sex, consistent with the ordinary meaning of the regulatory language.

## **II. Proposed Rule**

This proposed rule would amend the language of 27 CFR 478.21, 479.21, and 555.21 to explain that "sex" as required by any ATF form (1) means an individual's immutable biological classification as either male or female, and (2) is not a synonym for and does not include the concept of gender identity. ATF proposes to amend 27 CFR 478.21(a) and

555.21(a) by adding two sentences that make clear that “sex” on ATF forms refers to an individual’s immutable biological classification as either male or female and does not include the concept of gender identity and that individuals should select their biological sex. ATF also proposes adding to § 478.21(a) and § 555.21(a) a sentence that reads, “Each form shall be executed under penalties of perjury, if the form or the regulation so provide.” A “penalties of perjury” clause is already present in § 479.21(a), and this rule would simply add this language for consistency and clarity in parts 478 and 555.

For 27 CFR 479.21(a), ATF proposes adding a sentence to explain that “sex” on ATF forms refers to an individual’s immutable biological classification as either male or female and does not include the concept of gender identity and that persons completing the form should select their biological sex. Additionally, ATF proposes to amend the existing “penalties of perjury” language for clarity so it reads, “Each form shall be executed under penalties of perjury, if the form or the regulation so provide.”

This rule also proposes to make a technical edit to correct the authority citation line for 27 CFR part 478 to read as: 5 U.S.C. 552(a); 18 U.S.C. 847, 921–934; 44 U.S.C. 3504(h).

### **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.

The proposed rule would amend 27 CFR 478.21, 479.21, and 555.21 to clarify the meaning of “sex” on ATF firearms and explosives forms in accordance with Executive Order 14168.

The Office of Management and Budget (“OMB”) has determined that this rule would not be a “significant regulatory action” under Executive Order 12866, as the rule merely proposes to clarify the ordinary meaning of a word in ATF’s regulations. There are no changes to ATF standards or compliance requirements; therefore, ATF anticipates no costs or benefits accruing from this proposed 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.

*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, 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. This proposed rule would not impose any additional costs because it merely makes clear that when individuals complete ATF firearms or explosives forms, they should select their biological sex under the question on “sex.”

### *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, 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). While this proposed rule clarifies the meaning of “sex” for purposes of ATF information collections that have an attached form, this rule would not impact any existing information collections.

### *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-AA64 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-AA64. 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 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 on the webpage. 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-AA64).

### **List of subjects**

**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.

**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.

**27 CFR part 555**

Administrative practice and procedure, Explosives, Freight, Hazardous substances, Imports, Penalties, Reporting and record-keeping requirements, Safety, Security measures, Seizures and forfeitures, Transportation, Warehouses.

For the reasons discussed in the preamble, ATF proposes to amend 27 CFR parts 478, 479, and 555 as follows:

**PART 478—COMMERCE IN FIREARMS AND AMMUNITION**

1. Revise the authority citation for 27 CFR part 478 to read as follows:

**Authority:** 5 U.S.C. 552(a); 18 U.S.C. 847, 921–934; 44 U.S.C. 3504(h).

**§ 478.21 [Amended]**

2. In § 478.21, add at the end of paragraph (a): “The term ‘sex’ on ATF forms required by this part refers to an individual’s immutable biological classification as either male or female and does not include the concept of gender identity. Individuals completing forms required by this part should select their biological sex. Each form must be executed under penalties of perjury, if the form or the regulation so provide.”

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

3. 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.

**§ 479.21 [Amended]**

4. In § 479.21, remove from paragraph (a) the fourth sentence and add in its place after the third sentence: “The term ‘sex’ on ATF forms required by this part refers to an individual’s immutable biological classification as either male or female and does not include the concept of gender identity. Individuals completing forms required by this part should select their biological sex. Each form shall be executed under penalties of perjury, if the form or the regulation so provide.”

**PART 555—COMMERCE IN EXPLOSIVES**

5. The authority citation for 27 CFR part 555 continues to read as follows:

**Authority:** 18 U.S.C. 847.

**§ 555.21 [Amended]**

6. In § 555.21, add at the end of paragraph (a): “The term ‘sex’ on ATF forms required by this part refers to an individual’s immutable biological classification as either male or female and does not include the concept of gender identity. Individuals completing forms required by this part should select their biological sex. Each form must be executed under penalties of perjury, if the form or the regulation so provide.”

**Robert Cekada,**

Director

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