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DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms, and Explosives

27 CFR parts 478 and 479

[Docket No. ATF-2026-0069; ATF No. 2025R-06P]

RIN 1140-AA93

Firearm Activities in Foreign Trade Zones, Customs-Bonded Warehouses

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 the definition of "importation" in the implementing regulations for the Gun Control Act ("GCA") and the National Firearms Act ("NFA"). Specifically, the rule proposes to create an exclusion from the GCA and NFA's import requirements for items brought into a customs-bonded warehouse ("CBW") (in addition to the existing exclusion for a foreign-trade zone ("FTZ")). The proposed modification to the definition would also remove the condition that items may be brought into FTZs and CBWs only "for storage." The proposed rule does not exempt merchandise from any applicable customs requirements.

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-AA93, 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-AA93*.

Instructions: All submissions must include the agency name and number (RIN 1140-AA93) 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, 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.[1] 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), (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 implementing both the GCA and the NFA in 27 CFR parts 478 and 479. In addition to enforcing and administering the GCA and the NFA, ATF is responsible for enforcing and administering the permanent import provisions of the Arms Export Control Act ("AECA"), 22 U.S.C. 2778. Each of these laws restricts the import of certain firearms, ammunition, barrels, or defense articles. The President has delegated to the Attorney General the authority to

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[1] 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.

[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, 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.

designate and control permanent import of defense articles and services appearing on the U.S. Munitions Import List ("USMIL"). *See* E.O. 13637, *Administration of Reformed Export Controls*, 78 FR 16129 (Mar. 8, 2013); 27 CFR 447.1.

The GCA, at 18 U.S.C. 922(*l*), makes it unlawful for any person to knowingly import or bring into the United States any firearm or ammunition except as permitted under section 925(d), which specifies the conditions under which the Attorney General must authorize importing those items into the United States. The NFA, at 26 U.S.C. 5844, also restricts importing certain types of firearms defined as NFA firearms, with similar limited exceptions. *See also* 27 CFR 479.111. Finally, the AECA, at 22 U.S.C. 2778, authorizes controls on importing defense articles appearing on the USMIL.

The term "importation" is not defined in either the GCA or NFA but is defined in the regulations that implement those statutes. The GCA regulations define "importation" as "[t]he bringing of a firearm or ammunition into the United States," 27 CFR 478.11, while the NFA regulations define "importation" as "[t]he bringing of a firearm within the limits of the United States or any territory under its control or jurisdiction, from a place outside thereof (whether such place be a foreign country or territory subject to the jurisdiction of the United States), with intent to unlade." 27 CFR 479.11. AECA regulations define "importation" as "bringing into the United States from a foreign country any of the articles on the [USMIL]," which includes many firearms and ammunition regulated under the GCA and NFA, as well as firearm parts. 27 CFR 447.11.

Both the GCA and the NFA regulations explicitly exclude from their definition of "importation" the bringing of a firearm into a foreign-trade zone ("FTZ"). FTZs are secure areas located in or near ports of entry and are established by the Foreign Trade Zone Board under the Foreign Trade Zone Act of 1934 ("FTZ Act"), as amended. 19 U.S.C. 81a–81u. FTZs are outside of the customs territory of the United States for purposes of paying duties but are not outside of the United States' legal jurisdiction

generally. *See* 15 CFR 400.1(c). With respect to FTZs, the GCA's implementing regulations state that bringing a firearm "from outside the United States *into a foreign-trade zone for storage* pending shipment to a foreign country or subsequent importation into this country, pursuant to this part, *shall not be deemed importation.*" *See* 27 CFR 478.11 (emphases added). The NFA's implementing regulations similarly exclude FTZs from the definition of "importation," providing that bringing an NFA firearm into an FTZ for storage pending shipment to a foreign country or subsequent importation into this country under Title 26 of the United States Code is not "importation." *See* 27 CFR 479.11. As a result of these definitional exceptions, firearms and other regulated items (like barrels and ammunition) may be brought from outside the United States into FTZs for storage without regard to the GCA's and NFA's import restrictions.

However, the AECA regulations do not exempt from "importation" firearms that are admitted into FTZs for storage pending shipment to a foreign country or subsequent importation. *See* 27 CFR 447.11. Under the AECA regulations, firearms and firearm parts listed as defense articles on the USMIL are considered imported unless they are transactions subject to Department of State controls. Therefore, to comply with the AECA, a federal firearms licensee ("FFL") must complete ATF Form 5330.3A, Application/Permit to Import Firearms, Ammunition, and Defense Articles ("Form 6, part I"), and obtain approval from ATF prior to bringing any firearms into FTZs. *See* 27 CFR 447.41. To withdraw firearms from an FTZ and permanently import them into the United States, an FFL must complete ATF Form 5330.3C, Releasing/Receiving Imported Firearms, Ammunition and Defense Articles ("Form 6A") and receive approval from ATF. *See* 27 CFR 478.113.

Federal law also allows items to be brought into Customs Bonded Warehouses ("CBWs"), which are distinct from FTZs and are "buildings or parts of buildings and other enclosures . . . for the storage of imported merchandise entered for warehousing, or

taken possession of by the appropriate customs officers or under seizure, or for the manufacture of merchandise in bond, or for the repacking, sorting, or cleaning of imported merchandise." 19 U.S.C. 1555(a). CBWs are supervised and regulated by U.S. Customs and Border Protection ("CBP"). *Id.* However, because the current GCA and NFA regulations do *not* exempt items brought into CBWs from the definition of "importation" despite the functional similarities between FTZs and CBWs, firearms brought into a CBW are currently considered "imported" and must therefore qualify for an exception to the general import prohibitions of the GCA, 18 U.S.C. 925(d), and the NFA, 26 U.S.C. 5844.

II. Proposed Rule

A. Adding customs-bonded warehouses to the import exceptions

ATF is proposing that items brought into CBWs be excepted from the GCA and NFA regulatory definitions of "importation" in the same way that items brought into FTZs are currently excepted.

Some firearms industry members have historically conducted firearms activities such as storage, manipulation, or destruction in CBWs rather than in FTZs. But, in October 2024, ATF issued an Open Letter to FFLs on "Allowable Activities for Firearms Brought into Customs Bonded Warehouses and Foreign Trade Zones" ("FTZ/CBW Open Letter"),[3] which clarified that 27 CFR 478.11 and 479.11 permit an importer to bring firearms and ammunition into only FTZs, but not CBWs, for storage pending importation into the United States. As a result, firearms brought into CBWs are currently subject to the import restrictions of the GCA and NFA. The FTZ/CBW Open Letter resulted in firearms industry members needing to transition these activities to FTZs. Some industry

[3] ATF, *Open Letter to All Federal Firearms Licensees: Allowable Activities for Firearms Brought into Customs Bonded Warehouses and Foreign Trade Zones* (Oct. 31, 2024), https://www.atf.gov/firearms/docs/open-letter/all-ffls-october-2024-open-letter-allowable-activities-firearms-brought/download [https://perma.cc/GF73-SEJU].

members were required to establish new FTZs with the FTZ Board. Although there are differences between CBWs and FTZ for purposes of customs law and regulations,[4] ATF finds that for purposes of GCA and NFA import restrictions that there is no statutory basis to treat CBWs differently from FTZs, and that forcing importers to transition from one to the other may needlessly impose additional costs on industry members. ATF believes it is in the public interest to alleviate this burden by allowing importers to choose whether to conduct these authorized activities in either an FTZ or a CBW based on, for example, the availability of such facilities near their place of business, or differences in applicable customs regulations that may impact business operations.

Accordingly, ATF specifically proposes to update its regulations under 27 CFR 478.11 and 479.11 to exclude both FTZs and CBWs from the definition of "importation."[5] This amendment would provide greater flexibility under ATF regulations to parties who conduct authorized activities in FTZs and CBWs. ATF believes that extending the FTZ exemption from GCA and NFA importation restrictions to items stored in CBWs does not create a public safety risk. A CBW is managed by both CBP and the warehouse proprietor, and CBP has a right of entry into CBWs. Importers and manufacturers should note, however, that federal customs law and regulations limit the types of activity that can be conducted in a CBW and FTZ, independent of the restrictions

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[4] CBWs and FTZs are both CBP supervised areas that allow for the deferral of duties and taxes along with delay in decisions as to admissibility on imported merchandise. However, they differ significantly in their underlying statutory authorities, regulatory framework, operational flexibility, storage duration, and the types of goods and activities permitted, which can lead to inefficiencies and confusion if CBWs and FTZs are mistakenly treated as equivalent. Merchandise brought into a CBW is held in joint custody between the proprietor and CBP. The importer is responsible for duties on the warehoused goods, guaranteed by the terms and conditions of its basic importation bond. The CBW proprietor is responsible for safekeeping of the goods, guaranteed by the terms and conditions of its basic custodial bond. Merchandise admitted into an FTZ remains the sole responsibility of the zone operator, whose Foreign Trade Zone Operator bond guarantees safekeeping of the goods and payment of duties on any merchandise that cannot be accounted for. Prohibited merchandise may not be admitted into an FTZ but is not barred from entry and storage into a CBW. *See* Customs Border Protection, *Foreign-Trade Zones Frequently Asked Questions*, https://www.help.cbp.gov/s/article/Article-1905?language=en_US [https://perma.cc/H6BQ-7B4Z]; *What is a Customs-Bonded Warehouse*, https://www.help.cbp.gov/s/article/Article1853?language=en_US [https://perma.cc/JE8P-YKMK].

[5] The new definitions for "importation" proposed herein are distinct from how this term is defined for customs law purposes. *See* 19 CFR 101.1.

of the GCA, NFA, and AECA. *See, e.g.*, 19 U.S.C. 81c(a); 19 CFR 19.1(a). Under the proposed rule, the scope of the exemption for CBWs would be the same as the one for FTZs and would thus not impact any other aspect of the requirements under the GCA or NFA.

B. Removing the "for storage" limitation on the FTZ exception in the definition of "importation"

The current definitions of "importation" in the GCA and NFA regulations have caused considerable uncertainty among industry members as to what kinds of activities are permissible within FTZs (which, under this proposed rule, would also be permissible in CBWs). This uncertainty has imposed unnecessary costs on industry members and on ATF, and it has constrained the ability of the industry to take advantage of the economic opportunities provided in the customs code. The FTZ/CBW Open Letter noted that "storage" is not defined in the applicable law or regulation, but that ATF permits limited activities like repacking or sorting because they are "incidental to the primary purpose of storage." However, ATF continues to receive questions about what activities are permitted under this interpretation. It can take ATF considerable time to respond to these questions to ensure adequate legal review and consistency in its responses. This incurs labor costs to the agency (costing taxpayers money), and response delays increase industry uncertainty.

By removing the requirement from the regulation that items be brought into FTZs (and, as proposed above, CBWs) only "for storage," there will no longer be ambiguity in these definitions as to what is and is not permitted. ATF notes that CBP is responsible for determining what operations pertaining to firearms conducted in a CBW are permissible and the FTZ Board is responsible for determining what operations pertaining to firearms conducted in an FTZ are permissible. For example, manufacturing within CBWs is restricted by CBP regulations, which permit manufacturing to occur only in specified

warehouses and solely for purposes of exporting from the United States if the articles are made in whole or in part of imported materials or of materials subject to internal-revenue tax. *See* 19 CFR 19.1(a)(6). Accordingly, although ATF will not preclude firearms from being brought into an FTZ or CBW for purposes other than storage, whether any operation other than storage is permitted is contingent upon a determination by the FTZ Board for FTZs or CBP for CBWs in accordance with applicable customs laws.

In addition to regulatory clarity, eliminating the storage limitation for firearms under ATF regulations will benefit industry members in the United States and the American economy generally. The storage limitation currently prohibits an importer from bringing firearms into an FTZ or CBW and performing manufacturing or manufacturing-type activities on them before selling the firearms overseas. To do so under the existing regulatory framework, an importer must go through the process of importing the firearms into the United States (if they are of the type that can be imported), paying the duties, performing the work on them, and re-exporting them. Additionally, because of the regulatory restriction, ATF has previously denied requests from importers who have sought permission to first bring nonsporting weapons (which generally cannot be imported under the GCA) into an FTZ or CBW in order to reconfigure or reassemble them into sporting configurations before bringing them into the United States, as permitted by applicable customs laws and regulations. Removing the storage restriction and allowing other permitted activities like these to occur within CBWs and FTZs, which are geographically located within the United States, would provide greater flexibility to businesses in terms of the types of activities they can do within these spaces on their firearms using American labor, which in turn would benefit the American economy.

ATF does not believe that removing the "for storage" limitation will negatively impact public safety or undermine the GCA and NFA. Regardless of whether firearms are manufactured outside the United States or manipulated in FTZs (or CBWs) before being

imported, the firearms must qualify for import under the GCA (and NFA, if applicable), and the importer or manufacturer must be federally licensed and comply with marking and record-keeping requirements to ensure the firearms are traceable (and, if required under the NFA, tax-paid and registered).[6]

Additionally, other agencies regulate all activities pertaining to merchandise brought into FTZs or CBWs, which further alleviates any public safety concern. For example, manufacturing in CBWs is permitted in only specified warehouses and solely for purposes of exporting from the United States articles made in whole or in part of imported materials or of materials subject to internal-revenue tax. *See* 19 CFR 19.1(a)(6). In addition, only certain compliant merchandise can be transported in-bond, necessitating that the merchandise is properly moved from the port of arrival to an appropriate type of bonded warehouse at the port of entry. *See* 19 CFR 18.1.

Finally, clarity in the regulations furthers the Administration's priority of clearly delineating proscribed conduct so that "unwitting individuals" will not be subject to prosecution. *See* E.O. 14294, *Fighting Overcriminalization in Federal Regulations*, 90 FR 20363 (May 9, 2025). By removing the vague "for storage" restriction, the proposed amendment minimizes potential ambiguity in the regulatory language.

In addition, ATF is proposing technical edits to the two definitions for plain writing purposes, and to add "firearm barrel" to the definition under 27 CFR 478.11 among items that may be imported, so that it more faithfully aligns with the statute at 18 U.S.C. 925(d)(3).

III. Statutory and Executive Order Review

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[6] As noted above, however, to comply with the AECA, an FFL must complete an ATF Form 6, part I, and obtain approval from ATF prior to bringing any firearms into FTZs or CBWs. *See* 27 CFR 447.41. To subsequently withdraw firearms from an FTZ that can be permanently imported into the United States per the law and regulations, FFLs must complete a Form 6A and receive approval from ATF. *See* 27 CFR 478.113.

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 Office of Management and Budget ("OMB") has determined that, although this rule is not economically significant, this rule is a "significant regulatory action" under section 3(f)(1) of Executive Order 12866. OMB has therefore reviewed this rule. ATF provides the following analysis to comply with Executive Orders 12866 and 13563.

In 2024, ATF published an open letter clarifying that ATF regulations only permitted firearms and other regulated items to be brought from outside the United States into FTZs for storage without regard to the GCA's and NFA's import restrictions and that such an exemption did not extend to CBWs. As a result, firearms brought into CBWs are currently subject to the import restrictions of the GCA and NFA. The FTZ/CBW Open Letter resulted in firearms industry members needing to transition these activities to FTZs. This proposed rule would amend 27 CFR 478.11 and 479.11 so that items brought into CBWs be excepted from the GCA and NFA regulatory definitions of "importation" in the same way that items brought into FTZs are currently excepted. This would allow FFL importers to use CBWs in lieu of FTZs.

Based on ATF's Federal Firearms Licensing Center, there are 1,666 FFL importers. Of these, an unknown subset may have been using CBWs instead of FTZs. ATF assumes for purposes of this analysis that this proposed rule would impact approximately 10 percent of all FFL importers (167 FFL importers).

While using FTZs may be more advantageous than CBWs, some FFL importers have not used FTZs. Enforcing the GCA and NFA import restrictions as applied to CBWs requires that non-compliant FFL importers transition their operating locations to a new location. For example, they may have to establish an FTZ, which may have a one-time application fee of $10,000 and require operating agreements, employee oversight, and annual servicing fees of $10,000.[7] Since these operating service agreements, security requirements, and employee oversight obligations may be customized to suit each particular location and or size and operation of any given FFL, ATF requests comments as to the incremental difference in operating costs between operating in an FTZ compared to a CBW.

Assuming that 10 percent of all FFL importers would move their operations to an FTZ absent this proposed rule, at minimum the proposed rule may save the industry a one-time initial application fee of $1.67 million if importers have the option to operate in a CBW.[8] This savings may be more or less, depending on the difference in operating costs between an FTZ and a CBW. Currently, based on anecdotal information from the industry, the process to move importers' operations from a CBW to an FTZ may be difficult and cost millions of dollars to continue operating while seeking a permanent location to an FTZ. To the extent that there are transition costs, ATF requests public comments from importers regarding the costs they may incur to an establish a CBW compared to an FTZ, such costs to apply, the estimated difference in security cost between a CBW and FTZ , the estimated cost to move goods and equipment from CBW to an FTZ, and any other differences in costs incurred when switching from a CBW to FTZ. In addition, ATF requests information on how this proposed rule may alter other

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[7] Greater Dayton Foreign Trade Zone, Inc., *How much does a Foreign Trade Zone Cost?*, https://ftz100.flydayton.com/faq/how-much-does-a-foreign-trade-zone-cost/ [https://perma.cc/KZ4M-9P63].

[8] $1,670,000 = 167 FFL importers * $10,000 initial application fee.

business decision making and how industry may make use of the flexibilities granted. For example:

- What benefits or savings would a business realize by bringing firearms into a CBW rather than an FTZ?
- What additional activities, not presently performed on firearms, does a business anticipate performing in an FTZ or CBW if the "for storage" requirement is removed as proposed?
- Are there other incidental services that make it more advantageous to bring firearms into a CBW compared to an FTZ?

The benefit to this proposed rule is to allow FFL importers who have historically used CBWs instead of FTZs to continue to do so and not require them to transition their operations to an FTZ.

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

ATF considered various alternatives, including maintaining the status quo. Maintaining the status quo would require current non-compliant FFL importers to move their operations from a CBW to an FTZ. If, as discussed above, 10 percent of existing FFL importers are operating in a CBW and need to move their operations and transition to an FTZ, this would cost them a minimum of approximately $1.67 million and additional operating costs until these importers could finalize their change in locations. ATF has concluded that maintaining the status quo would provide less flexibility for importers and it has therefore rejected this alternative because it would appear to add more costs over time.

Alternative 2. Issuing guidance.

Another alternative ATF considered is reissuing guidance to extend the exemption from importation to CBWs. However, publishing this interpretation through guidance would not be consistent with the text of the current regulations, which provides an

exemption for only FTZs but not CBWs; it would therefore be implausible to interpret the existing regulatory exemption as reaching CBWs. Thus, this alternative was rejected.

Alternative 3. Rulemaking (proposed alternative).

Finally, ATF considered the proposed alternative. ATF proposes to publish a regulation amending the definition of "importation" so that when items are brought into a CBW they are excepted from the GCA and NFA import restrictions in the same way that items brought into FTZs are currently excepted. This change would alleviate the burden on non-compliant FFL importers from having to move their operations to a new location, and may thus provide a one-time savings of $1.67 million and potential operating costs stemming from making the transition. Furthermore, ATF believes that there would be no additional safety risks by extending the FTZ exemption from GCA and NFA importation restrictions to items stored in CBWs.

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. Although it would be a significant regulatory action as defined by Executive Order 12866, it would not impose total costs greater than zero. The proposed rule would allow importers more flexibility by including

CBWs as a place where importers can bring firearms into the United States and by removing the restriction that such items brought into FTZs and CBWs can be brought in for storage purposes only, consistent with applicable customs rules and regulations, thereby creating a qualitative benefit. This rule also imposes no costs. ATF therefore 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 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 fewer than 50,000.

ATF performed an initial regulatory flexibility analysis of the potential impacts on small businesses and other entities that could occur due to this proposed rule, if finalized as proposed.

Initial Regulatory Flexibility Analysis ("IRFA")

The RFA establishes "as a principle of regulatory issuance that agencies shall endeavor, consistent with the objectives of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the businesses, organizations, and governmental jurisdictions subject to regulation. To achieve this principle, agencies are required to solicit and consider flexible regulatory proposals and to explain the rationale for their actions to ensure that such proposals are given serious consideration." Pub. L. 96–354, sec. 2(b), 94 Stat. 1164 (1980).

Under the RFA, the agency is required to consider whether the proposed rule would have a significant economic impact on a substantial number of small entities. Agencies must perform a review to determine whether the proposed rule would have such an impact. If the agency determines that it would, the agency must prepare an IRFA (or a regulatory flexibility analysis for a final rule) as described in the Act. *See* 5 U.S.C.

603(b). ATF prepared the following IRFA assessing the proposed rule's impact on small entities.

1. Describing the reasons why the agency is considering taking action

ATF is proposing this action to provide clarity and flexibility for importers by permitting them to treat firearms in CBWs the same way that they treat firearms in FTZs. ATF finds that FTZs and CBWs are functionally similar spaces for purposes of GCA and NFA import restrictions by which importers may bring items into the United States without immediate payment of duty, but the regulation granting exceptions to FTZs does not currently extend to CBWs. There has since been a disparity that creates complications and hurdles for importers, forcing some importers to relocate their operations between facilities and likely incurring substantial costs in the process. ATF does not anticipate this rule creating significant economic costs for small entities, as this rule would have a deregulatory savings that would be beneficial to FFL importers because they would be afforded the option to bring their items into either an FTZ or a CBW.

2. Succinctly stating the objectives of, and legal basis for, the proposed rule

The objective of this proposed rule is to reduce the regulatory burden on importers and the public by treating FTZs and CBWs the same way in the regulatory definition of importing, and making it clearer for importer FFLs that they are not limited solely to storing firearms when bringing them into FTZs and CBWs, as consistent with applicable customs laws and regulations.

3. Describing and, where feasible, estimating the number of small entities to which the proposed rule would apply

Based on information from the Federal Firearms Licensing Center, there are an estimated 1,666 Type 08 FFL firearms importers. For the purposes of defining small

importers, these importers are small businesses under NAICS[9] 423910 Sporting and Recreational Goods and Supplies Merchant Wholesalers (which includes wholesalers/importers of sporting firearms and ammunition). Importers that fall under this NAICS would be considered small should they have a workforce of fewer than 100 employees.

While the majority of importers are anticipated to fall under NAICS 423910, there may be a subset that fall under NAICS 332994 Small Arms, Ordnance, and Ordnance Accessories Manufacturing. Importers that fall under this NAICS would be considered small should they have a workforce of fewer than 1,000 employees.

Assuming that Type 08 FFL importers track the size of FFLs more generally, the majority of these importers are likely to be small businesses, per the Small Business Administration's size standard, because the majority of FFLs are small businesses.

All Type 08 importers would benefit from this proposed rule because the rule would extend the existing exemptions that firearms importers have for GCA and NFA items in FTZs to such items they have in CBWs, thereby conferring a benefit, and would impose no costs.

However, based on internal ATF information, there are approximately 21,499 domestic manufacturers of firearms (Type 07 FFL manufacturers) that may be indirectly and negatively affected by this proposed rule due to increased competition from importers potentially now being able to expand imports of foreign firearms. ATF is unable to assess a significant impact and requests public comment on the impact to small entities that manufacture and/or sell only domestic firearms.

4. Describing the proposed rule's projected reporting, record-keeping, and other compliance requirements, including an estimate of the classes of small entities which

[9] NAICS is the North American Industry Classification System, which is the standard used by federal statistical agencies in classifying business establishments for the purpose of collecting, analyzing, and publishing statistical data related to the U.S. business economy.

would be subject to the requirement and the type of professional skills necessary to prepare the report or record

There are no additional requirements or direct costs imposed by this proposed rule to importers. This rule would mitigate costs and burdens on the public. Nor are there direct costs or compliance requirements for manufacturers, although, as noted above, importers may potentially increase foreign firearm imports, which then might increase competition for domestic firearm manufacturers.

5. Identifying, to the extent practicable, all relevant federal rules which might duplicate, overlap, or conflict with the proposed rule

This proposed rule would not duplicate or conflict with other federal rules.

6. Describing any significant alternatives to the proposed rule which accomplishes the stated objectives of applicable statutes and which minimizes any significant economic impact the proposed rule might have on small entities

As discussed above, assuming that Type 08 FFL importers track the size of FFLs more generally, the majority of these importers are likely to be small businesses, per the Small Business Administration's size standard. This proposed rule relaxes federal requirements and makes it so that small businesses may bring firearms into FTZs for purposes other than merely temporary storage, and into CBWs for the same expanded purposes, consistent with applicable customs laws and regulations. This proposal would increase small businesses' importing options and thus provides a benefit. To the extent that the rule significantly impacts small businesses, it would alleviate significant hurdles rather than impose new ones. ATF determined that the benefits to the proposed rule outweigh the potential impacts to domestic small businesses indirectly affected by this proposed rule.

ATF seeks input from the public on this proposed rule and whether there are other alternatives the public believes would accomplish the same goal that could operate within

the statutory and regulatory framework.

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 involves two existing information collections under the PRA. These information collections, OMB control number 1140-0005, Application/Permit to Import Firearms, Ammunition, and Defense Articles, which includes ATF Form 5330.3A ("Form 6, part I"), and OMB control number 1140-0007, Releasing/Receiving Imported Firearms, Ammunition, and Defense Articles, which includes ATF Form 5330.3C ("Form 6A"), would be unchanged by this proposed rule.

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-AA93 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 parts of 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-AA93. 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. 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-AA93).

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 recordkeeping requirements, Research, Seizures and forfeitures, Transportation.

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 proposes to amend 27 CFR parts 478 and 479 as follows:

PART 478—COMMERCE IN FIREARMS AND AMMUNITION

1. The authority citation for 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 § 478.11 by revising the definition of "Importation", including its heading, to read as follows:

§ 478.11 Meaning of terms.

* * * * *

Importing (or importation). Bringing a firearm, firearm barrel, or ammunition into the United States or any possession thereof from a place outside the United States or any possession thereof, except that a firearm, firearm barrel, or ammunition brought into a foreign-trade zone or customs-bonded warehouse is not imported for purposes of this part until the item is removed from such a facility into the United States or any possession thereof.

* * * * *

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

3. The authority citation for part 479 continues to read as follows:

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

4. Amend § 479.11 by revising the definition of "Importation", including its heading, to read as follows:

§ 479.11 Meaning of terms.

* * * * *

Importing (or importation). Bringing a firearm into the United States from a place outside thereof, or into any territory under the United States' control or jurisdiction from a place outside thereof, with intent to unlade, except that a firearm brought into a foreign-trade zone or customs-bonded warehouse is not imported for purposes of this part until the firearm is removed from such a facility into the United States or any territory under its control or jurisdiction.

* * * * *

Robert Cekada,
Director.
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