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DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms, and Explosives

27 CFR Part 479

[Docket No. ATF 41P; AG Order No. -]

RIN: 1140-AA43

Machine Guns, Destructive Devices and Certain Other Firearms; Background Checks for Responsible Persons of a Corporation, Trust or Other Legal Entity With Respect to Making or Transferring a Firearm

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

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department of Justice proposes amending Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) regulations that concern the making or transferring of a firearm under the National Firearms Act (NFA). The proposed changes include: defining the term “responsible person,” as used in reference to a trust, partnership, association, company, or corporation; requiring “responsible persons” of such legal entities to submit, *inter alia*, photographs and fingerprints, as well as a law enforcement certificate, when the legal entity files an application to make an NFA firearm or is listed as the transferee on an application to transfer an NFA firearm; modifying the information required in a law enforcement certificate, so that the certificate no longer requires a statement from the certifying official that he or she has no

information indicating that the maker or transferee of the NFA firearm will use the firearm for other than lawful purposes; and adding a new section to 27 CFR part 479 to address the possession and transfer of firearms registered to a decedent. The new section would clarify that the executor, administrator, personal representative, or other person authorized under state law to dispose of property in an estate may possess a firearm registered to a decedent during the term of probate without such possession being treated as a “transfer” under the NFA. It also would specify that the transfer of the firearm to any beneficiary of the estate may be made on a tax-exempt basis.

DATES: Written comments must be postmarked and electronic comments must be submitted on or before [INSERT DATE 90 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. Commenters should be aware that the electronic Federal Docket Management System will not accept comments after 11:59 p.m. Eastern Time on the last day of the comment period.

ADDRESSES: You may submit comments, identified by docket number (ATF 41P), by any of the following methods—

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- Fax: (202) 648-9741.
- Mail: Brenda Raffath Friend, Mailstop 6N-602, Office of Regulatory Affairs, Enforcement Programs and Services, Bureau of Alcohol, Tobacco, Firearms, and Explosives, U.S. Department of Justice, 99 New York Avenue, NE, Washington, DC, 20226; *ATTN: ATF 41P*.

Instructions: All submissions received must include the agency name and docket number for this rulemaking. All comments received will be posted without change to the Federal eRulemaking portal, <http://www.regulations.gov>, including any personal information provided. 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.

FOR FURTHER INFORMATION CONTACT: Brenda Raffath Friend, Office of Regulatory Affairs, Enforcement Programs and Services, Bureau of Alcohol, Tobacco, Firearms, and Explosives, U.S. Department of Justice, 99 New York Avenue, NE, Washington, DC, 20226; telephone: (202) 648-7070.

SUPPLEMENTARY INFORMATION:

I. Background

The Attorney General is responsible for enforcing the provisions of the NFA, 26 U.S.C. Chapter 53.¹ The Attorney General has delegated that responsibility to the Director of ATF, subject to the direction of the Attorney General and the Deputy Attorney General. 28 CFR 0.130(a). Regulations implementing the provisions of the NFA are set forth in 27 CFR part 479, which contains the procedural and substantive requirements relating to the importation, making, exportation, transfer, taxing, identification, registration of, and the dealing in, machine guns, destructive devices, and certain other firearms.

¹ Provisions of the NFA discussed below refer to the “Secretary” rather than the “Attorney General”; however, the relevant functions of the Secretary of the Treasury have been transferred to the Department of Justice, under the general authority of the Attorney General. 28 U.S.C. 599A(c)(1). For ease of reference, we will substitute “Attorney General” for “Secretary” when discussing these statutes.

A. Application to Make a Firearm

Section 5822 of the NFA, 26 U.S.C. 5822, provides that no person shall make a firearm unless the person has: (i) filed with the Attorney General a written application, in duplicate, to make and register the firearm; (ii) paid any tax payable on the making, and evidenced such payment by affixing the proper stamp to the original application form; (iii) identified the firearm to be made in the application form, in such manner as prescribed by regulation; (iv) identified themselves in the application form, in such manner as prescribed by regulation, except that, if such person is an individual, the identification must include the individual's fingerprints and photograph; and (v) obtained the approval of the Attorney General to make and register the firearm and shows such approval on the application form. Applications shall be denied if the making or possession of the firearm would place the person making the firearm in violation of law. For purposes of title 26, United States Code, the term "person" means "an individual, a trust, estate, partnership, association, company or corporation." 26 U.S.C. 7701(a)(1).

Regulations implementing section 5822 are set forth in 27 CFR part 479, subpart E. Section 479.62 provides, in pertinent part, that no person may make a firearm unless the person has filed with the Director a written application on ATF Form 1 (5320.1), *Application to Make and Register a Firearm*, in duplicate, and has received the approval of the Director to make the firearm. Approval of the application will effectuate registration of the firearm to the applicant. The application must identify the firearm to be made by serial number and other specified markings and information. In addition, the applicant must be identified on the form by name and address and, if other than a natural person (e.g., a corporation or trust), by the name and address of the principal officer or

authorized representative of the entity, as well as the employer identification number of the entity. If an individual, the identification must also include certain information prescribed in § 479.63.

Section 479.63 states that if the applicant is an individual, a photograph of the applicant, approximately 2 x 2 inches and taken within 1 year prior to the date of the application, must be affixed to the indicated space on each copy of the Form 1. The regulation also provides that a completed Federal Bureau of Investigation (FBI) Form FD-258 (Fingerprint Card), containing the fingerprints of the applicant, must be submitted in duplicate with the application.

In addition, section 479.63 provides that the law enforcement certificate located on Form 1 must be completed and signed by the local chief of police or county sheriff, the head of the state police, the state or local district attorney or prosecutor, or such other person whose certificate may be acceptable to the Director. The certifying official must state, *inter alia*, that he or she has no information indicating that possession of the firearm by the maker would be in violation of state or local law or that the maker will use the firearm for other than lawful purposes. The certifying official must have jurisdiction over the area within which the maker resides. The purpose of this requirement is to ensure that the official will have access to criminal records concerning the maker, and knowledge of the state and local laws governing the transfer, receipt, and possession of the firearm by the maker.

Under the current regulations, the requirements for fingerprints, photographs, and law enforcement certificate specified in § 479.63 are not applicable to an applicant who is not an individual, e.g., a corporation or other legal entity.

Section 479.64 sets forth the procedure for approval of an application to make a firearm. As specified, the Form 1 application must be forwarded, in duplicate, by the maker of the firearm to the Director, in accordance with the instructions on the form. If the application is approved, the Director will return the original to the maker of the firearm and retain the duplicate. Upon receipt of the approved application, the maker is authorized to make the firearm described therein. The maker of the firearm may not, under any circumstances, make the firearm until the application has been forwarded to the Director and has been approved and returned by the Director with the NFA stamp affixed. If the application is disapproved, the original Form 1 and the remittance submitted by the applicant for the purchase of the stamp will be returned to the applicant with the reason for disapproval stated on the form.

B. Application for Transfer of a Firearm

Section 5812(a) of the NFA, 26 U.S.C. 5812(a), provides that a firearm may not be transferred unless: (i) the transferor of the firearm has filed with the Attorney General a written application, in duplicate, for the transfer and registration of the firearm to the transferee, using the prescribed application form; (ii) any tax payable on the transfer is paid as evidenced by the proper stamp affixed to the original application form; (iii) the transferee is identified in the application form, in such manner as the Attorney General may prescribe by regulation, except that, if such person is an individual, the identification must include the individual's fingerprints and photograph; (iv) the transferor of the firearm is identified in the application form, in such manner as the Attorney General may prescribe by regulation; (v) the firearm is identified in the application form, in such manner as the Attorney General may prescribe by regulation; and (vi) the application

form shows that the Attorney General has approved the transfer and the registration of the firearm to the transferee. Applications shall be denied if the transfer, receipt, or possession of the firearm would place the transferee in violation of law. Section 5812(b) provides that the transferee may not take possession of the firearm unless the Attorney General has approved the transfer and registration of the firearm to the transferee.

Regulations implementing section 5812 are set forth in 27 CFR part 479, subpart F. In general, § 479.84 provides that no firearm may be transferred in the United States unless an application, ATF Form 4 (5320.4), *Application for Tax Paid Transfer and Registration of Firearm*, has been filed in duplicate with, and approved by, the Director. Form 4 must be filed by the transferor and must identify the firearm to be transferred by type, serial number, and other specified markings and information. The application must identify the transferor by name and address and must include the transferor's Federal firearms license and special (occupational) tax stamp, if any. If the transferor is other than a natural person, the title or status of the person executing the application must be provided. The application must identify the transferee by name and address and, if the transferee is a natural person not qualified as a manufacturer, importer, or dealer under part 479, the person must be further identified in the manner prescribed in § 479.85.

Section 479.85 states that if the transferee is an individual, such person must securely attach to each copy of the Form 4, in the space provided on the form, a 2 x 2 inch photograph of the transferee taken within 1 year prior to the date of the application. The transferee must also attach to the application two properly completed FBI Forms FD-258 (Fingerprint Card). In addition, a certificate by the local chief of police, county sheriff, head of the state police, state or local district attorney or prosecutor, or such other

person whose certificate may in a particular case be acceptable to the Director, must be completed on each copy of the Form 4. The certifying official must state, *inter alia*, that he or she has no information indicating that the receipt or possession of the firearm would place the transferee in violation of state or local law or that the transferee will use the firearm for other than lawful purposes. The certifying official must have jurisdiction over the area within which the transferee resides. The purpose of this requirement is to ensure that the official will have access to criminal records concerning the transferee, and knowledge of the state and local laws governing the transfer, receipt, and possession of the firearm by the transferee.

Under the current regulations, the requirements for fingerprints, photographs, and law enforcement certificate specified in § 479.85 apply only to natural persons not qualified as a manufacturer, importer, or dealer under part 479; they do not apply to transferees who are not natural persons, e.g., corporations or other legal entities.

C. Transfer Tax Exemption Available

Section 5852(e) of the NFA, 26 U.S.C. 5852(e), provides that an unserviceable firearm may be transferred as a curio or ornament without payment of the transfer tax imposed by section 5811, under such requirements as the Attorney General may by regulations prescribe.

Section 5853(a) of the NFA, 26 U.S.C. 5853(a), provides that a firearm may be transferred without the payment of the transfer tax imposed by section 5811 to any State, possession of the United States, any political subdivision thereof, or any official police organization of such a government entity engaged in criminal investigations.

Regulations implementing sections 5852(c) and 5853(a) are set forth in 27 CFR 479.90 and 479.91. These sections provide, in pertinent part, that the exemption from the transfer tax for the transfer of an unserviceable firearm as a curio or ornament or for a transfer to or from certain government entities may be obtained by the transferor of the firearm by filing with the Director an application, ATF Form 5 (5320.5), *Application for Tax Exempt Transfer and Registration of Firearm*, in duplicate. The application must: (i) show the name and address of the transferor and of the transferee; (ii) identify the Federal firearms license and special (occupational) tax stamp, if any, of the transferor and of the transferee; (iii) show the name and address of the manufacturer and the importer of the firearm, if known; (iv) show the type, model, overall length (if applicable), length of barrel, caliber, gauge or size, serial number, and other marks of identification of the firearm; and (v) contain a statement by the transferor that the transferor is entitled to the exemption because either the transferor or the transferee is a governmental entity coming within the purview of § 479.90(a) or the firearm is unserviceable and is being transferred as a curio or ornament. In the case of the transfer of a firearm by a governmental entity to a transferee who is a natural person not qualified as a manufacturer, importer, or dealer under part 479, the transferee must be further identified in the manner prescribed in § 479.85.

II. Petition

ATF received a petition for rulemaking, dated December 3, 2009, filed on behalf of the National Firearms Act Trade and Collectors Association (NFATCA). The petition requests amendments to §§ 479.63 and 479.85, as well as to corresponding ATF Forms 1 and 4. The requested amendments are discussed below.

A. Amendment of §§ 479.63 and 479.85

As discussed above, the photograph, fingerprint card, and chief law enforcement officer (CLEO) certificate requirements of §§ 479.63 and 479.85 do not apply if the applicant or transferee is a partnership, company, association, trust, or corporation. As such, persons who possess, directly or indirectly, the power or authority to receive, possess, ship, transport, deliver, transfer or otherwise dispose of a firearm for, or on behalf of the entity are not subject to these requirements, and ATF does not conduct a background check of those individuals.

The NFATCA expressed concern that persons who are prohibited by law from possessing or receiving firearms may acquire NFA firearms through the establishment of a legal entity such as a corporation, trust, or partnership. It contends that the number of applications to acquire NFA firearms via a corporation, partnership, trust, or other legal entity has increased significantly over the years. ATF has researched the issue and has determined that the number of Forms 1, 4, and 5 involving legal entities that are not Federal firearms licensees increased from approximately 840 in 2000 to 12,600 in 2009 and to 40,700 in 2012. There accordingly has been an increase in the number of individuals who have access to NFA firearms but who have not undergone a background check. The petitioner expressed concern that an NFA firearm could be acquired by a prohibited person and used in a violent crime. Therefore, for applications for a corporation, trust, partnership, or other legal entity to make or receive an NFA firearm, the petitioner has requested amendments to §§ 479.63 and 479.85 to require photographs and fingerprint cards for persons who are responsible for directing the management and policies of the entity, so that a background check of the individual may be conducted.

The Department of Justice agrees with the concerns underlying this proposal, and believes that such persons should not be excluded from background checks and other requirements of the regulations that seek to ensure that prohibited persons do not gain access to NFA firearms. ATF recently encountered a situation where an application for a transfer of a silencer was denied because the transferee was determined to be prohibited from possessing an NFA firearm. The transferor subsequently applied to transfer the same silencer to a trust whose name contained the same last name as the prior transferee. ATF reviewed the trust documents and found that the prohibited person was a settlor of the trust and, thus, would have access to the firearm. ATF denied the transfer. However, if the trust name had been different from that of the prior transferee, or if the transferor sought to transfer a different firearm, ATF employees may not have realized that the prior transferee was a settlor of the trust and so may have approved the transfer.

B. Certification of Citizenship

When filing an ATF Form 1, 4, or 5, the applicant also must submit ATF Form 5330.20, *Certification of Compliance with 18 U.S.C. 922(g)(5)(B)*. Under section 922(g)(5)(B) of the Gun Control Act, 18 U.S.C. 922(g)(5)(B), it generally is unlawful for any alien admitted under a nonimmigrant visa to ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any firearm or ammunition, or to receive any firearm or ammunition that has been shipped or transported in interstate or foreign commerce. Section 922(y)(2) provides for certain exceptions. 18 U.S.C. 922(y)(2). If an alien who was admitted under a nonimmigrant visa falls within one of the specified exceptions, or has obtained a waiver from the Attorney General under 18 U.S.C. 922(y)(3), appropriate documentation must be provided on Form 5330.20.

The petitioner requests that the information required on Form 5330.20 be incorporated into the requirements of 27 CFR 479.63 and 479.85 and the corresponding forms. According to the petitioner, “[e]limination of the ATF Form 5330.20 by adding a citizenship statement to the transfer [and making] forms would reduce human effort for both the public and ATF while reducing funds expenditures for printing, copying, and handling the form.”

The Department supports the elimination of unnecessary forms and is committed to reducing the paperwork burden for individuals and businesses. Accordingly, the Department proposes amending 27 CFR 479.62 and 479.84 and the corresponding forms to incorporate information currently required in Form 5330.20.

C. Revision of Instructions on Forms 1, 4, and 5

The NFATCA requests that the instructions on applications to make or transfer a firearm be revised so that they are consistent with those on ATF Form 7 (5310.12), *Application for Federal Firearms License*. The petitioner appears to be referring to the instruction on Form 7 regarding the submission of photographs and fingerprint cards for responsible persons, namely, in the case of a corporation, partnership, or association, any individual possessing, directly or indirectly, the power to direct or cause the direction of the management, policies, and practices of the legal entity, insofar as they pertain to firearms. The Department agrees that proposed changes to regulations will require modifications to corresponding Forms 1, 4, and 5, including changes to the instructions on the forms.

D. Law Enforcement Certificate

With respect to an application to make a firearm, 27 CFR 479.63 provides that if the applicant is an individual, a certificate of the local chief of police, county sheriff, head of the state police, state or local district attorney or prosecutor, or such other person whose certificate may be acceptable to the Director, shall be completed on each copy of the Form 1. The certificate must state, *inter alia*, that the certifying official has no information indicating that possession of the firearm by the maker would be in violation of state or local law or that the maker will use the firearm for other than lawful purposes. The law enforcement certificate requirement also applies with respect to an application to transfer a firearm if the transferee is an individual. 27 CFR § 479.85.

The petitioner requests that the law enforcement certificate requirement be eliminated and that ATF “adopt a CLEO [chief law enforcement officer] process that will include a full NICS [National Instant Criminal Background Check System] check for principal officers of a trust or corporation receiving such firearms for the trust or corporation.” The petitioner articulates several reasons in support of its request. For example, it states that the lack of cooperation on the part of many CLEOs in recent years has forced larger numbers of individuals to acquire NFA firearms via a trust or corporate entity, so as to avoid the need for a law enforcement certificate. The petitioner also asserts that ATF no longer accepts the CLEO certificate as *prima facie* verification of compliance with state and local law, and that the certificate therefore does not alleviate the burden on ATF to verify that receipt or possession of a NFA firearm would not place the applicant or transferee in violation of state or local law.

Although ATF agrees in principle with some of petitioner’s assertions (for example, with the fact that ATF independently verifies whether receipt or possession of a

NFA firearm would place the applicant or transferee in violation of state or local law), ATF does not propose to eliminate the CLEO certificate requirement at this time. Rather, ATF proposes extending the CLEO certificate requirement to responsible persons of a legal entity. ATF also proposes amending the language of the certificate to omit the requirement that the certifying official state that he has no information that the applicant or transferee will use the firearm for other than lawful purposes.

Sections 5812 and 5822 of the NFA, 26 U.S.C. 5812 and 5822, provide that applications shall be denied if the transfer, making, receipt, or possession of the firearm would place the applicant or transferee in violation of law. When the law enforcement certificate requirement was implemented in 1934, local law enforcement officials were generally better situated than federal officials to determine whether the transfer, making, receipt, or possession of the firearm would place the applicant or transferee in violation of state or local law. There were not at that time any readily accessible national automated databases, such as the National Crime Information Center (NCIC), that could facilitate instantaneous comprehensive nationwide criminal background checks. Although federal officials would consult available criminal history and criminal identification records, the assessment of whether an applicant or transferee would use the firearm for other than lawful purposes often was based on information in the possession of local police. The CLEO certificate requirement thus was intended in part to ensure that an individual's authority to make, receive, or possess an NFA firearm was consistent with state and local law, and that the background of the individual was assessed by those in the best position to evaluate it.

In light of the NCIC's establishment in 1967 and additional technological developments, ATF now has direct access to a number of criminal history databases, a fact that puts it in a stronger position than before to assess the criminal background of applicants and transferees. ATF no longer relies exclusively on CLEO certificates to assess whether the making, receipt, or possession of a firearm by an applicant or transferee would violate state or local law or whether a particular applicant or transferee has a record that would warrant denying the application. ATF conducts its own background checks of individuals applying to make and receive NFA firearms. In addition to transmitting fingerprints to the FBI for a criminal history check, ATF routinely queries the following databases and indexes:

- National Crime Information Center
- TECS (formerly named the Treasury Enforcement Communication System)
- National Law Enforcement Telecommunications System
- Interstate Identification Index
- National Instant Criminal Background Check System

Although access to these databases provides ATF with a fuller picture of any individual than was possible in 1934, the available information is not comprehensive in all cases. For a variety of reasons, it is still the case that local law enforcement may have access to more complete records. For example, according to a 2006 publication by the Department of Justice, not all state criminal history records meet the standard for inclusion in the Interstate Identification Index database (the national criminal history record depository maintained by the FBI), and only 50 percent of arrest records in the

database have final dispositions.² To ensure that background checks for NFA firearms are as complete as possible, ATF proposes to retain the CLEO certificate requirement for individuals, and to expand the requirement to responsible persons of a legal entity.

With respect to the law enforcement officer's statement in the CLEO certificate that he or she has no information indicating that the transferee will use the firearm described on the Form 4 for other than lawful purposes, the petitioner states that "[s]ome CLEOs express a concern of perceived liability; that signing an NFA transfer application will link them to any inappropriate use of the firearm." ATF agrees with the petitioner that state and local law enforcement officials may be concerned with the language of the current law enforcement certificate, a concern that also applies to Forms 1 and 5. ATF has received numerous statements from chiefs of police, sheriffs, and other CLEOs expressing discomfort with the portion of the certificate that requires them to state that they have no information to suggest that the individual will use the firearm for other than lawful purposes. ATF is aware that officials in a number of jurisdictions refuse to sign the certificate because of concern about potential liability for an individual's intentional or accidental misuse. Such refusals have resulted in litigation by some applicants against ATF. *See Lomont v. O'Neill*, 285 F.3d 9 (D.C. Cir. 2002); *Westfall v. Miller*, 77 F.3d 868 (5th Cir. 1996). While courts have upheld the CLEO certificate requirement, ATF proposes to amend the language of the regulations and the corresponding forms to address this concern. Sections 479.63 and 479.85 will no longer require the certificate to contain a statement regarding information about the use of the firearm for other than

² U.S. Department of Justice, The Attorney General's Report on Criminal History Background Checks, at 17 (June 2006), available at http://www.justice.gov/olp/ag_bgchecks_report.pdf.

lawful purposes. ATF requests comments on the specific language proposed, and whether this change will address the concerns raised by some CLEOs.

III. Proposed Rule

A. Amendment of § 479.11

The Department proposes amending § 479.11 to add a definition for the term “responsible person.” The term would include specific definitions in the case of a trust, partnership, association, company (including a Limited Liability Company (LLC)), or corporation. Depending on the context, the term includes any individual, including any grantor, trustee, beneficiary, partner, member, officer, director, board member, owner, shareholder, or manager, who possesses, directly or indirectly, the power or authority under any trust instrument, contract, agreement, article, certificate, bylaw, or instrument, or under state law, to receive, possess, ship, transport, deliver, transfer, or otherwise dispose of a firearm for, or on behalf of, the entity.

To ensure that responsible persons, as so defined, are subject to penalties under 26 U.S.C. 5871 for committing prohibited acts under the NFA (as defined in 26 U.S.C. 5861) to the same extent as are the legal entities with which they are associated, the Department also proposes amending the definition of “person” in 27 CFR 479.11 to clarify that a “person” is a partnership, company, association, trust, or corporation, including each responsible person associated with such an entity; an estate; or an individual.

Although the definition of “person” in section 479.11 includes the word “estate,” ATF traditionally has treated estates differently from business entities, and does not propose defining the term “responsible person” to include estates. Estates are temporary

legal entities created to dispose of property previously possessed by a decedent. The term during which an estate exists typically is defined by state law in the State in which the decedent resided. Conversely, partnerships, trusts, associations, companies, and corporations are formed for a specific purpose and remain in existence until action is taken to dissolve them.

Historically, ATF has treated the transfer of an NFA-registered firearm held by an estate differently from other transfers under the NFA. ATF allows the registered firearm to be held by the executor, administrator, personal representative, or other person authorized under state law to dispose of property in an estate (executor) without such possession being treated as a transfer under the NFA. Because the executor holds the property temporarily, is representing the decedent, and is bound by the limits of probate, ATF does not register the firearm to the executor and allows the transfer from the estate of the decedent directly to the beneficiaries, with the executor signing as the transferor. The disposition of the firearm to the beneficiaries of the estate is a “transfer by operation of law,” because it is an involuntary transfer dictated by the terms of a will or by intestacy laws in the State where the decedent resided. The transfer to the beneficiaries of the estate is treated like any other transfer of registered firearms, except that ATF allows such transfers to be made on a tax-exempt basis when an ATF Form 5 is submitted and approved in accordance with 27 CFR 479.90. The transfer of the firearm to persons outside the estate requires the executor to file an ATF Form 4 and to pay any transfer tax in accordance with § 479.84.

B. Amendment of §§ 479.62 and 479.63

With respect to an application to make a firearm, the Department proposes several amendments to §§ 479.62 (Application to make) and 479.63 (Identification of applicant).

The proposed § 479.62:

1. Provides that if the applicant is a partnership, company, association, trust, or corporation, all information on the Form 1 application must be furnished for each responsible person of the applicant;
2. Specifies that if the applicant is a partnership, company, association, trust, or corporation, each responsible person must comply with the identification requirements prescribed in § 479.63(b); and
3. Requires the applicant (including, if other than an individual, any responsible person), if an alien admitted under a nonimmigrant visa, to provide applicable documentation demonstrating that he or she falls within an exception to 18 U.S.C. 922(g)(5)(B) or has obtained a waiver of that provision.

The proposed § 479.63, where the applicant is an individual, maintains the CLEO certificate but omits the requirement for a statement about the use of a firearm for other than lawful purposes. The certificate must state that the official is satisfied that the fingerprints and photograph accompanying the application are those of the applicant and that the official has no information indicating that possession of the firearm by the maker would be in violation of state or local law.

The CLEO's certification that he or she "is satisfied that the fingerprints and photograph accompanying the application are those of the applicant," is an existing requirement. ATF intends to modify Form 1 to include certification to that effect by the

CLEO for individuals (which has always been a requirement but was not reflected on the current form). As discussed below, ATF will include the same certification on Form 5320.23 for responsible persons of a legal entity.

The proposed § 479.63, where the applicant is a partnership, company, association, trust, or corporation:

1. Provides that the applicant must be identified on the Form 1 application by the name and exact location of the place of business, including the name of the county in which the business is located or, in the case of a trust, the address where the firearm is located. In the case of two or more locations, the address shown must be the principal place of business (or principal office, in the case of a corporation) or, in the case of a trust, the principal address at which the firearm is located;
2. Requires the applicant to attach to the application:
 - Documentation evidencing the existence and validity of the entity, which includes, without limitation, complete and unredacted copies of partnership agreements, articles of incorporation, corporate registration, declarations of trust with any trust schedules, attachments, exhibits, and enclosures; however, if the entity had an application approved as a maker or transferee within the preceding 24 months, and there has been no change to the documentation previously provided, the entity may provide a certification that the information has not changed since the prior approval and must identify the application for which the documentation had been submitted by form number, serial number, and date approved;

- A completed ATF Form 5320.23 for each responsible person. Form 5320.23 would require certain identifying information for each responsible person, including each responsible person's full name, position, social security number (optional), home address, date and place of birth, and country of citizenship;
- In accordance with the instructions provided on Form 5320.23, a photograph of each responsible person 2 x 2 inches in size, clearly showing a full front view of the features of the responsible person with head bare, with the distance from the top of the head to the point of the chin approximately 1¼ inches, and which must have been taken within 1 year prior to the date of the application;
- Two properly completed FBI Forms FD-258 (Fingerprint Card) for each responsible person. The fingerprints must be clear for accurate classification and should be taken by someone properly equipped to take them; and
- In accordance with the instructions provided on Form 5320.23, a certificate for each responsible person completed by the local chief of police, sheriff of the county, head of the state police, state or local district attorney or prosecutor, or such other person whose certificate may in a particular case be acceptable to the Director. The certificate for each responsible person must be completed by the CLEO who has jurisdiction in the area in which the responsible person resides. The certificate must state that the official is satisfied that the fingerprints and photograph accompanying the application are those of the responsible person and that the certifying official has no information indicating that possession of the firearm by the responsible person would be in violation of state or local law.

ATF seeks public comments regarding whether it is feasible to ask CLEOs to certify that they are satisfied that the photographs and fingerprints match those of the responsible person. For example, some responsible persons may bring their fingerprint cards to the CLEO office already stamped, and some legal entities may have the paperwork, fingerprint cards, and photographs for each of their responsible persons couriered to the CLEO office. In such instances, ATF seeks comments on whether CLEOs will have enough information to certify that they are satisfied that the photographs and fingerprints match those of the responsible persons, or whether changes are needed to this proposal.

C. Amendment of §§ 479.84 and 479.85

With respect to an application to transfer a firearm, the Department proposes several amendments to §§ 479.84 (Application to transfer) and 479.85 (Identification of transferee).

The proposed § 479.84:

1. Provides that the Form 4 application, in duplicate, must be filed by the transferor. If the transferee is a partnership, company, association, trust, or corporation, all information on the Form 4 application must be furnished for each responsible person of the transferee; and
2. Provides that the type of firearm being transferred must be noted on the Form 4. If the firearm is other than one classified as “any other weapon,” the applicant must submit a remittance in the amount of \$200 with the application in accordance with the instructions on the form. If the firearm is classified as “any other weapon,” the applicant must submit a remittance in the amount of \$5.

The proposed § 479.85, where the transferee is an individual, maintains the certificate but omits the requirement for a statement about the use of a firearm for other than lawful purposes. The certificate must state that the official is satisfied that the fingerprints and photograph accompanying the application are those of the applicant and that the certifying official has no information indicating that receipt or possession of the firearm by the transferee would be in violation of state or local law.

The CLEO's certification that he or she "is satisfied that the fingerprints and photograph accompanying the application are those of the applicant," is an existing requirement. ATF intends to modify Forms 4 and 5 to include certification to that effect by the CLEO for individuals (which has always been a requirement but was not reflected on the current forms). As discussed below, ATF will include the same certification on Form 5320.23 for responsible persons of a legal entity.

The proposed § 479.85, where the transferee is a partnership, company, association, trust, or corporation:

1. Provides that the transferee must be identified on the Form 4 application by the name and exact location of the place of business, including the name of the county in which the business is located or, in the case of a trust, the address where the firearm is to be located. In the case of two or more locations, the address shown must be the principal place of business (or principal office, in the case of a corporation) or, in the case of a trust, the principal address at which the firearm is to be located;

2. Requires the transferee to attach to the application:

- Documentation evidencing the existence and validity of the entity, which includes, without limitation, complete and unredacted copies of partnership

agreements, articles of incorporation, corporate registration, declarations of trust with any trust schedules, attachments, exhibits, and enclosures; however, if the entity has had an application approved as a maker or transferee within the preceding 24 months, and there has been no change to the documentation previously provided, including the responsible person information, the entity may provide a certification that the information has not changed since the prior approval and must identify the application for which the documentation had been submitted by form number, serial number, and date approved;

- A completed ATF Form 5320.23 for each responsible person. Form 5320.23 would require certain identifying information, including the responsible person's full name, position, social security number (optional), home address, date and place of birth, and country of citizenship;
- In accordance with the instructions provided on Form 5320.23, a photograph of each responsible person 2 x 2 inches in size, clearly showing a full front view of the features of the responsible person with head bare, with the distance from the top of the head to the point of the chin approximately 1¼ inches, and which must have been taken within 1 year prior to the date of the application;
- Two properly completed FBI Forms FD-258 (Fingerprint Card) for each responsible person. The fingerprints must be clear for accurate classification and should be taken by someone properly equipped to take them; and
- In accordance with the instructions provided on Form 5320.23, a certificate for each responsible person completed by the local chief of police, sheriff of the county, head of the state police, state or local district attorney or

prosecutor, or such other person whose certificate may in a particular case be acceptable to the Director. The certificate for each responsible person must be completed by the CLEO who has jurisdiction in the area in which the responsible person resides. The certificate must state that the official is satisfied that the fingerprints and photograph accompanying the application are those of the responsible person and that the certifying official has no information indicating that receipt or possession of the firearm by the responsible person would be in violation of state or local law.

ATF seeks public comments regarding whether it is feasible to ask CLEOs to certify that they are satisfied that the photographs and fingerprints match those of the responsible person. For example, some responsible persons may bring their fingerprint cards to the CLEO office already stamped, and some legal entities may have the paperwork, fingerprint cards, and photographs for each of their responsible persons couriered to the CLEO office. In such instances, ATF seeks comments on whether CLEOs will have enough information to certify that they are satisfied that the photographs and fingerprints match those of the responsible persons, or whether changes are needed to this proposal.

D. Amendment of § 479.90

Section 5853(a) of the NFA, 26 U.S.C. 5853(a), provides that a firearm may be transferred to any State, possession of the United States, any political subdivision thereof, or any official police organization of such a government entity engaged in criminal investigations, without the payment of the transfer tax. Regulations implementing section 5853(a) are set forth in 27 CFR 479.90. That section provides, in pertinent part,

that the transfer tax exemption may be obtained by the transferor of the firearm by filing with the Director an application on ATF Form 5 (5320.5), *Application for Tax Exempt Transfer and Registration of Firearm*, in duplicate. The application must provide certain information, including the name and address of the transferor and the transferee. In the case of a transfer of a firearm by a governmental entity to a transferee who is a natural person not qualified as a manufacturer, importer, or dealer under part 479, the transferee must be further identified in the manner prescribed in § 479.85.

The Department proposes amending § 479.90(b) to remove the word “natural.” Removing the word “natural” leaves the term “person,” which would be defined in § 479.11 to include a partnership, company, association, trust, or corporation (including each responsible person of such entity), an estate, or an individual. This change would mean that in the case of a transfer of a firearm by a governmental entity to a transferee that is a partnership, company, association, trust, or corporation, and that is not qualified as a manufacturer, importer, or dealer under part 479, each responsible person of the transferee would be subject to the requirements prescribed in § 479.85.

E. Addition of § 479.90a, Estates

The Department proposes adding a new section to part 479 to address the possession and transfer of firearms registered to a decedent. The new section would specify that the executor, administrator, personal representative, or other person authorized under state law to dispose of property in an estate (collectively “executor”) may lawfully possess the decedent’s NFA firearm during the term of probate without such possession being treated as a transfer from the decedent. The new section also would clarify that the executor may transfer firearms held by the estate on a tax-free basis

when the transfer is to a beneficiary of the estate; when the transfer is to persons outside the estate, the executor must pay the appropriate transfer tax.

F. Transfer of Unserviceable Firearm

Section 479.91 provides that an unserviceable firearm, defined in § 479.11 as a firearm which is incapable of discharging a shot by means of an explosive and incapable of being readily restored to a firing condition, may be transferred as a curio or ornament without payment of the transfer tax. This section also provides that the procedures set forth in § 479.90 must be followed for the transfer of an unserviceable firearm, with the exception that a statement must be entered on the application that the transferor is entitled to the exemption because the firearm is unserviceable and is being transferred as a curio or ornament. This section will remain unchanged. It references the procedures in § 479.90, which itself references § 479.85, which would be amended by the proposals herein.

G. Miscellaneous

ATF recognizes that the composition of the responsible persons associated with a trust, partnership, association, company, or corporation may change, and is considering a requirement that new responsible persons submit Form 5320.23 within 30 days of the change. ATF seeks comments on this option and solicits recommendations for other approaches.

IV. Statutory and Executive Order Review

A. Executive Order 12866 and 13563 – Regulatory Review

This proposed rule has been drafted in accordance with section 1(b) of Executive Order 12866 (“Regulatory Planning and Review”) and with section 1(b) of Executive

Order 13563 (“Improving Regulation and Regulatory Review”). The Department of Justice has determined that this proposed rule is a significant regulatory action under section 3(f) of Executive Order 12866, and accordingly this proposed rule has been reviewed by the Office of Management and Budget (OMB).

The proposed rule complies with the public participation requirements of Executive Order 13563. As this rulemaking is in response to a petition for rulemaking, ATF seeks the views of those who are likely to be affected by the proposed rule (including those who are likely to benefit and those who are potentially subject to the proposed rule) prior to issuing the final rule.

This proposed rule will not have an annual effect on the economy of \$100 million or more; nor will it adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities. Accordingly, this proposed rule is not an economically significant rulemaking as defined by Executive Order 12866. The estimated costs and benefits of the proposed rule are discussed below.

1. Summary of Costs and Benefits

This proposed rule would require certain legal entities (trusts, partnerships, companies, associations, and corporations) applying to make or receive an NFA firearm to submit information for each of its responsible persons to ATF in order for ATF to ensure such persons are not prohibited from possessing NFA firearms. ATF estimates a total cost of \$14.9 million annually for: (1) legal entities to gather, procure, and submit such information to ATF; (2) ATF to process the information and conduct a background check on responsible persons; and (3) local and state agencies possibly to review the

information provided on Form 5320.23 which is submitted as part of a Form 1, 4, or 5 application, conduct their own background checks, and determine whether to complete the certificate. These proposed provisions will have public safety benefits in that they will enable ATF to ensure that the responsible persons within legal entities that request to make or receive NFA firearms are not prohibited from possessing such firearms under federal, state, or local law.

2. Costs and Benefits of Ensuring Responsible Persons Within Legal Entities Are Not Prohibited from Possessing NFA Firearms

ATF estimated the cost of the proposed provisions to ensure responsible persons within legal entities are not prohibited from possessing NFA firearms by: (1) estimating the time and other resources that would be expended by legal entities to complete paperwork, obtain photographs and fingerprints, receive CLEO certificates, and send this information to ATF; (2) estimating the time and other resources that would be expended by ATF to process and review the materials provided by the legal entities and to conduct background checks of responsible persons; and (3) estimating costs for state and local agencies in the event they review the information provided, conduct their own background checks; and determine whether to complete the CLEO certificate.

ATF estimated the cost of the time for legal entities to complete these tasks using employee compensation data for September 2012 as determined by the U.S. Department of Labor, Bureau of Labor Statistics (BLS). *See* http://www.bls.gov/news.release/archives/ecec_12112012.pdf. The BLS determined the hourly compensation (which includes wages, salaries, and benefits) for civilian workers to be \$30.80. In addition, ATF estimates that each legal entity has an average of two

responsible persons, an estimate that is based on ATF's review of 39 recent randomly selected paper (hardcopy) applications for corporations, LLCs, and trusts. ATF welcomes comments from the industry and other members of the public regarding the accuracy of its assumptions and estimates.

In calendar year (CY) 2012, ATF received 84,435 applications that were either ATF Forms 1, 4, or 5. Of these, 40,700 applications were for unlicensed legal entities (e.g., corporations, companies, and trusts) to make or receive an NFA firearm; 29,448 were for individuals to make or receive an NFA firearm; and 14,287 were for government agencies or qualified Federal firearms licensees (Gov/FFLs) to make or receive an NFA firearm. The numbers of applications, by Form and submitting individual or entity, are set forth below.

Table A—Numbers of Applications

CY 2012	Legal Entity	Individual	Gov/FFL	Total
Form 1	5328	3758	576	9662
Form 4	35237	25102	4746	65085
Form 5	135	588	8965	9688
Total	40700	29448	14287	84435

Under the proposed rule, a legal entity would be required to complete the following steps in addition to completing the applicable Form 1, 4, or 5 before it is permitted to make or receive an NFA firearm:

1. Complete and submit proposed Form 5320.23 for each responsible person;
2. Submit fingerprints, photographs, and CLEO certificate for each responsible person; and
3. Submit a copy of the documentation that establishes the legal existence of the legal entity.

In addition, under the proposed rule, information required on the existing ATF Form 5330.20 would be incorporated into the ATF Forms 1, 4, and 5.

COST TO LEGAL ENTITIES

Cost of completion of a responsible person form

The proposed rule would require legal entities to complete and submit to ATF a new form (Form 5320.23), photographs, fingerprint cards, and a CLEO certificate for each responsible person before the legal entity is permitted to make or receive an NFA firearm. The information required on Form 5320.23 would include the responsible person's name, position, home address, social security number (optional), date and place of birth, and country of citizenship. The identifying information for each responsible person is necessary in order for ATF, and possibly state and local law enforcement, to conduct a background check on each individual to ensure the individual is not prohibited from possessing an NFA firearm under federal, state, or local law.

ATF estimates the time for each responsible person to complete Form 5320.23 to be 10 minutes. Based on an estimate of 2 responsible persons per legal entity and 40,700 entities, the estimated annual cost of proposed Form 5320.23 is \$417,854 (10 minutes at \$30.80 per hour x 40,700 x 2).

Cost of photographs

ATF estimates that:

- The cost of the photographs is \$8.00 (cost based on the average of the costs determined for seven large retailers); and
- The time needed to procure photographs is 50 minutes.

Currently, only individuals must obtain and submit photographs to ATF. Based on an estimate of 29,448 individuals, the current estimated cost is \$991,416. (Cost of Photographs = $\$8.00 \times 29,448 = \$235,584$; Cost to Procure Photographs = 50 minutes at $\$30.80$ per hour $\times 29,448 = \$755,832$). Under the proposed rule, costs for individuals would remain the same, but legal entities would incur new costs. Each responsible person of a legal entity would be required to obtain and submit photographs. Based on an estimate of 2 responsible persons per entity and 40,700 entities, the estimated cost for legal entities to obtain and submit photographs is \$2,740,467. (Cost of Photographs = $\$8.00 \times 40,700 \times 2 = \$651,200$; Cost to Procure Photographs = 50 minutes at $\$30.80$ per hour $\times 40,700 \times 2 = \$2,089,267$).

Cost of fingerprints

ATF has reviewed various fingerprinting services. At the present time, ATF is only able to accept fingerprints on hard copy fingerprint cards. Thus, the cost estimates are based on the submission of two fingerprint hard copy cards for each responsible person.

- The estimated cost of the fingerprints is \$24.00 (cost based on the average of the costs determined for seven fingerprint services); and
- The estimated time needed to procure the fingerprints is 60 minutes.

Currently, only individuals must obtain and submit fingerprints. Based on an estimate of 29,448 individuals, the current estimated cost is \$1,613,750. (Cost of Fingerprints = $\$24.00 \times 29,448 = \$706,752$; Cost to Procure Fingerprints = 60 minutes at $\$30.80$ per hour $\times 29,448 = \$906,998$). Under the proposed rule, costs for individuals would remain the same, but legal entities would incur new costs. Each responsible person of a legal entity would be required to obtain and submit fingerprints to ATF.

Based on an estimate of 2 responsible persons per entity and 40,700 entities, the estimated cost for legal entities to obtain and submit fingerprints is \$4,460,720. (Cost of Fingerprints = $\$24.00 \times 40,700 \times 2 = \$1,953,600$; Cost to Procure Fingerprints = 60 minutes at $\$30.80$ per hour $\times 40,700 \times 2 = \$2,507,120$).

Costs for a legal entity to obtain CLEO certificate

ATF estimates that the time needed for a responsible person to procure the CLEO certificate is 100 minutes (70 minutes travel time and 30 minutes review time with the CLEO). Based on an estimate of 2 responsible persons per legal entity and 40,700 entities, the estimated cost for legal entities to obtain CLEO certificate is \$4,178,533 (100 minutes at $\$30.80$ per hour $\times 40,700 \times 2$).

Cost of documents to establish existence of legal entity

A legal entity that is applying to make or receive an NFA firearm must provide to ATF documentation evidencing the existence and validity of the entity—e.g., copies of partnership agreements, articles of incorporation, corporate registration, declarations of trust with any trust schedules, attachments, exhibits, and enclosures. Currently, legal entities may submit this documentation with their application package, although they are not required to do so. Therefore, ATF will treat the costs for documentation as new costs. ATF accepts, and will continue to accept, photocopies of the documents without notarization. ATF based the cost estimate by determining the average number of pages in the corporate or trust documents for 50 recent randomly selected paper (hardcopy) submissions, which was 15 pages.

ATF estimates that:

- The cost of the copied documentation is \$1.50 (\$.10 per page at 15 pages);
and
- The time needed to copy attachments is 5 minutes.

Assuming 40,700 entities would provide ATF this documentation each year, the estimated annual cost to submit the documentation is \$165,513. (Cost of documentation = $\$1.50 \times 40,700 = \$61,050$; Cost to copy attachments = 5 minutes at \$30.80 per hours $\times 40,700 = \$104,463$). This cost is not dependent on the number of responsible persons associated with a legal entity. ATF notes that the estimated cost is likely to be lower if the entity already has filed the documents with ATF as part of a recent making or transfer application and the information previously provided has not changed. Under these circumstances, the entity can certify to ATF that the documentation is on file and is unchanged.

Cost of completing and mailing Form 1, 4, or 5

Currently, both individuals and legal entities must complete and mail Form 1, 4, or 5. This proposed rule should not change the costs associated with this process. Even if there are multiple responsible persons associated with a legal entity, the legal entity still would be completing and mailing one Form 1, 4, or 5.

The estimated costs to legal entities that are discussed above are summarized in Tables B(1) and B(2). The total estimated new cost of the proposals for legal entities to provide to ATF identification information for each of its responsible persons is \$11,963,087 annually.

Table B(1)—Cost Estimates of the Time to Comply with the Proposed Rule's Requirements

Process	Estimated Time	Number of Entities	² Responsible Persons
Completion of F 5320.23	10 minutes	40,700	\$417,854
Procure Photographs	50 minutes	40,700	\$2,089,267
Procure Fingerprints	60 minutes	40,700	\$2,507,120
Obtain Certificate	100 minutes	40,700	\$4,178,533
Copy Attachments	5 minutes	40,700	\$104,463
		Total	\$9,297,237

Table B(2)—Cost Estimates of Procuring Photographs, Fingerprints, and Documentation

Process-related item	Estimated Cost	Number of Entities	² Responsible Persons
Photographs	\$8.00	40,700	\$651,200
Fingerprints	\$24.00	40,700	\$1,953,600
Documentation of Legal Entity	\$1.50	40,700	\$61,050
		Total	\$2,665,850

COST TO ATF

ATF incurs costs to process forms, fingerprint cards, photographs, and to conduct and review background checks. Currently, ATF incurs these costs for the 29,448 applications for individuals to make or receive NFA firearms. Under the proposed rule, ATF would incur these costs for applications for legal entities to make or receive NFA firearms. ATF estimates that:

- ATF's cost for FBI to process a set of fingerprints is \$14.50. (The cost is based on FBI's current fee, which is set by statute on a cost recovery basis.)
- The estimated cost for an examiner at ATF's NFA Branch to conduct and review the results of a background check is \$7.70 (15 minutes at \$30.80 per hour); and
- The estimated cost to print the new 5320.23 forms is \$.01 per form.

Based on an estimate of 2 responsible persons per legal entity and 40,700 entities, the estimated cost for ATF to process forms, fingerprint cards, photographs, and to conduct and review background checks for applications for legal entities to make or receive firearms is \$1,807,894 annually. (Cost for processing fingerprints = $\$14.50 \times 40,700 \times 2 = \$1,180,300$; Cost for background checks = $\$7.70 \times 40,700 \times 2 = \$626,780$; Cost to print forms = $\$.01 \times 40,700 \times 2 = \814).

Table C—Costs to ATF under Proposed Rule

Process	Estimated Cost or Time	Number of Entities	2 Responsible Persons
ATF's costs for Processing Fingerprints	\$14.50	40,700	\$1,180,300
Time Needed to Conduct and Review Background Check by ATF	15 minutes	40,700	\$626,780
Cost of 5320.23 form	\$.01	40,700	\$814
Total			\$1,807,894

COST TO STATE AND LOCAL AGENCIES

The proposed requirement for each responsible person of a legal entity to obtain a CLEO certificate may increase the cost to state and local agencies as they may decide to review the information provided, conduct their own background checks, and determine whether to complete the certificate. Based on an estimate of 2 responsible persons per legal entity and 40,700 entities, the estimated cost for state and local agencies to determine whether to sign the CLEO certificate is \$1,253,560 (30 minutes of review time at \$30.80 per hour x 40,700 x 2).

Table D Costs to State and Local Agencies under Proposed Rule

Process	Estimated Time	Number of Entities	2 Responsible Persons
Agency Costs to Review/Sign Certificate	30 minutes	40,700	\$1,263,560
		Total	\$1,263,560

BENEFITS OF BACKGROUND CHECKS FOR RESPONSIBLE PERSONS

Existing regulations do not require the identification of responsible persons of a legal entity. Therefore, ATF lacks the necessary information to perform a background check on a person who meets this proposed rule's definition of "responsible person" to determine if that person is prohibited from possessing an NFA firearm. This proposed rule, if finalized, would provide important public safety and security benefits by enabling ATF to identify and perform background checks on such persons.

For example, there may be a number of responsible persons associated with a corporation, LLC, or trust. As noted above, based on a recent review of paper (hardcopy) applications for corporations, LLCs, and trusts, ATF estimates that there are 2

responsible persons associated with such legal entities. One or more of these persons could be a prohibited person, e.g., a convicted felon. Currently, when an NFA transfer application is approved, a corporate officer or trustee arranges for the receipt of the firearm. If the seller is a Federal firearms licensee, the officer or trustee must complete ATF Form 4473 (5300.9), *Firearms Transaction Record*. On the Form 4473, the officer or trustee must answer questions which determine if the officer or trustee is a prohibited person. If one of the officers or trustees is prohibited, then one of the other officers or trustees may pick up the firearm and complete the Form 4473. If the seller is not a licensee, then no form is completed. Once the firearm is picked up by the officer or trustee, then it becomes corporate or trust property and can be possessed by any of the officers or trustees. In Texas, ATF became aware of a situation in which the member of an LLC was an illegal alien, living in the United States under an assumed name, and had a felony warrant outstanding. At that time, the LLC had 19 firearms registered to it and ATF lacked the necessary information to conduct any background checks to determine whether the member was a prohibited person. In Tennessee, as a result of information provided by a Federal firearms licensee, ATF became aware of applications submitted to transfer two NFA firearms to a trust in which one of the trustees was a convicted felon. If there had been no referral, ATF would not have known of the need to conduct any background checks for the trust members to determine if any were prohibited persons. As a result, under current regulations, prohibited persons can circumvent the statutory prohibitions and receive and possess firearms. This proposed rule will make the requirements for background checks the same for certain legal entities as they are now for individuals.

3. Consolidation of Forms

The incorporation of the information required on ATF Form 5330.20 into the existing Forms 1, 4, and 5 will reduce the burden upon the applicant or transferee by eliminating an additional form to be completed and filed. The current estimated time to complete the form is 3 minutes. Because the information requested on the forms is the same, any savings result from the applicant not having to attach a separate form. ATF estimates the elimination of the form will reduce the industry costs by \$108,028 (70,148 transactions for both individuals and legal entities x 3 minutes per form saved x \$30.80 per hour) and ATF's printing costs by \$701 (70,148 forms x .01 cents per form) for a total reduction in costs of \$108,729.

4. Number of Legal Entities

ATF cannot estimate with reasonable precision what effect this proposed rule will have on resources used for creating and maintaining these entities. ATF seeks information from the public to measure this effect, including how many fewer legal entities there may be (if any), and how much it costs on average to create and maintain such entities.

B. Executive Order 13132

This proposed rule will not have substantial direct effects on the States, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government.

While there would be an increase in the paperwork filed with ATF and an increase in the resources ATF devotes to processing that paperwork, as well as a potential increase in the resources state and local agencies may devote to processing CLEO certificates for

responsible persons of a legal entity, any impact on state and local resources would be voluntary and expected to be minimal, and must be balanced against the benefits of ATF being able to identify and conduct background checks on such persons. Therefore, in accordance with section 6 of Executive Order 13132 (“Federalism”), the Attorney General has determined that this proposed regulation does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

C. 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”).

D. Regulatory Flexibility Act

The Regulatory Flexibility Act requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 605(b). Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. 5 U.S.C. 601. The Attorney General has reviewed this proposed rule and, by approving it, certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities.

This proposed rule will primarily affect legal entities that are seeking to make or acquire NFA firearms and are not making or acquiring them as a qualified Federal firearms licensee. ATF believes that the increased cost of implementing the proposed regulations will not be significant on the entities. The estimated annual cost of implementing the proposed regulations is \$11,963,087 for identification costs for legal

entities. Accordingly, the estimated cost increase per entity is \$293.93 (Cost of increase ÷ 40,700 entities).

E. Small Business Regulatory Enforcement Fairness Act of 1996

This proposed rule is not a major rule as defined by section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996. 5 U.S.C. 804. This proposed rule will not result in an annual effect on the economy of \$100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.

F. Unfunded Mandates Reform Act of 1995

This proposed rule will not 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, no actions are deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

G. Paperwork Reduction Act

Under the Paperwork Reduction Act, a federal agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB. This proposed rule would revise several existing information collections and create a new information collection. The existing information collections that would be revised are in 27 CFR 479.62, 479.63, 479.84, 479.85, 479.90, 479.90a, and 479.91, which are associated with ATF Forms 1, 4, and 5. Forms 1, 4, and 5 have been approved by the OMB under control numbers 1140-0011,

1140-0014, and 1140-0015, respectively. The new information collection that would be created is associated with ATF Form 5320.23. Form 5320.23 would require certain identifying information for each responsible person within a legal entity requesting to make or receive an NFA firearm, including their full name, position, social security number (optional), home address, date and place of birth, and country of citizenship. Form 5320.23 also would require a proper photograph of each responsible person; two properly completed FBI Forms FD-258 (Fingerprint Card) for each responsible person; and a law enforcement certificate.

ATF is submitting a request to revise currently approved OMB control numbers 1140-0011, 1140-0014, and 1140-0015, and to obtain a new OMB control number for ATF Form 5320.23 in accordance with 5 CFR 1320.11. ATF requests public comments on all aspects of these proposed collections, including to:

- evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- enhance the quality, utility, and clarity of the information to be collected; and
- minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

The estimated total annual burden hours and related information (number of respondents, frequency of responses, costs, etc.) for the proposed revisions to Forms 1, 4, and 5, as well as the new Form 5320.23, appear below.

For a recent submission of an information collection request to the OMB regarding other changes to these forms, ATF performed an analysis of the time it takes to fulfill the requirements of each form. ATF found that the time varies among individuals, legal entities, and Gov/FFLs. For example, ATF estimates that it takes four hours for an individual to complete Form 1 due to the requirements to provide fingerprints, photographs and a law enforcement certificate. ATF estimates it takes less time for a Gov/FFL to complete Form 1 because the application does not require the submission of these items. The estimated submission times for individuals, legal entities, and Gov/FFLs are:

- 230 minutes for submission by an individual (50 minutes to procure photographs; 60 minutes to procure fingerprints, 100 minutes to obtain certificate; and 20 minutes to complete and mail the form);
- 465 minutes for a submission by a legal entity (for two responsible persons) (20 minutes to complete Form 5320.23; 100 minutes to procure photographs; 120 minutes to procure fingerprints; 200 minutes to obtain CLEO certificate; 5 minutes to procure the attachments; and 20 minutes to complete and mail the form); and
- 20 minutes (to complete and mail the form) for a submission by a Gov/FFL.

With respect to ATF Form 1:

Estimated total annual reporting and/or recordkeeping burden: 55,890 hours
(current estimated total annual reporting and/or recordkeeping burden from OMB
Information Collection Number 1140-0011: 4,284 hours). Note: 576 Gov/FFL
responders will take 20 minutes (192 hours); 5,328 legal entity responders will take 465
minutes (41,292 hours); and 3,758 individual responders will take 230 minutes (14,406
hours). (The numbers of responders by type are estimated based on the data in Table A.)

Estimated average burden hours per respondent and/or recordkeeper: 5.78 hours
(current estimated average burden hours per respondent or recordkeeper from OMB
Information Collection Number 1140-0011: 4 hours).

Estimated number of respondents and/or recordkeepers: 9,662 (current estimated
number of respondents and/or recordkeepers from OMB Information Collection Number
1140-0011: 1,071).

Estimated annual frequency of responses: 1 (current estimated annual frequency of
responses from OMB Information Collection Number 1140-0011: 1).

Estimated total costs: \$487,757.60

\$461,248 (fingerprints and photographs (\$32 x 3,758 (individuals) = \$120,256; \$32
x 10,656 (2 responsible persons) = \$340,992))

\$7,992 (copies of legal entity documents (\$1.50 x 5,328))

\$18,517.60 (mailing (\$2 each for 9,086 respondents and \$.60 for 576 respondents)

(current estimated total costs from OMB Information Collection Number 1140-0011:
\$471).

With respect to ATF Form 4:

Estimated total annual reporting and/or recordkeeping burden: 370,893 hours
(current estimated total annual reporting and/or recordkeeping burden from OMB
Information Collection Number 1140-0014: 44,260 hours). Note: 4,746 Gov/FFL
respondents will take 20 minutes (1,582 hours), 35,237 legal entity respondents will take
465 minutes (273,087 hours), and 25,102 individual respondents will take 230 minutes
(96,224 hours). (The numbers of responders by type are estimated based on the data in
Table A.)

Estimated average burden hours per respondent and/or recordkeeper: 5.69 hours
(current estimated average burden hours per respondent and/or recordkeeper from OMB
Information Collection Number 1140-0014: 4 hours).

Estimated number of respondents and/or recordkeepers: 65,085 (current estimated
number of respondents and/or recordkeepers from OMB Information Collection Number
1140-0014: 11,065).

Estimated annual frequency of responses: 1 (current estimated annual frequency of
responses from OMB Information Collection Number 1140-0014: 1).

Estimated total costs: \$3,234,813

\$3,058,432 (fingerprints and photographs ($\$32 \times 25,102$ (individuals) = \$803,264;
 $\$32 \times 70,474$ (2 responsible persons) = \$2,255,168))

\$52,855.50 (copies of legal entity documents ($\$1.50 \times 35,237$))

\$123,525.60 (mailing (\$2 each for 60,339 respondents and \$.60 for 4,746
respondents) (current estimated total costs from OMB Information Collection Number
1140-0014: \$4,536).

With respect to ATF Form 5:

Estimated total annual reporting and/or recordkeeping burden: 6,288 hours
(current estimated total annual reporting and/or recordkeeping burden from OMB
Information Collection Number 1140-0015: 379,896 hours).³ Note: 8,965 Gov/FFL
respondents will take 20 minutes (2,988 hours); 135 legal entity respondents will take
465 minutes (1,046 hours); and 588 individual respondents will take 230 minutes (2,254
hours). (The numbers of responders by type are estimated based on the data in Table A.)

Estimated average burden hours per respondent and/or recordkeeper: .65 hours
(current estimated average burden hours per respondent and/or recordkeeper from OMB
Information Collection Number 1140-0015: 4 hours).

Estimated number of respondents and/or recordkeepers: 9,688 (current estimated
number of respondents and/or recordkeepers from OMB Information Collection Number
1140-0015: 7,888).

Estimated annual frequency of responses: 1 (current estimated annual frequency of
responses from OMB Information Collection Number 1140-0015: 12).

Estimated total costs: \$34,483.50
\$27,456 (fingerprints and photographs (\$32 x 588 (individuals) = \$18,816; \$32 x
270 (2 responsible persons) = \$8,640))
\$202.50 (copies of legal entity documents (\$1.50 x 135))
\$6,825 (mailing (\$2 each for 723 respondents and \$.60 for 8,965 respondents))
(current estimated total costs from OMB Information Collection Number 1140-0015:
\$20,894).

³ The large drop in burden hours from 379,896 to 6,288 is attributable to a change in methodology. We no longer count each item on a Form 5 as a separate response. The current burden hours using the new methodology is 4,380 hours ((7,388 government agencies or legal entities x 20 minutes and ÷ 60) plus (500 individual respondents x 230 minutes and ÷ 60)).

With respect to ATF Form 5320.23:

Estimated total annual reporting and/or recordkeeping burden: 13,566.67 hours
(based on 2 responsible persons)

Estimated average burden hours per respondent and/or recordkeeper: .33 hours.

Estimated number of respondents and/or recordkeepers: 40,700.

Estimated annual frequency of responses: 1.

Estimated total costs: 0. (All the estimated costs are associated with the submission package for Forms 1, 4, and 5.)

The current estimated costs provided above for Forms 1, 4, and 5 are being revised. Due to an administrative oversight, the initial costs provided to OMB only reflected the costs associated with mailing the completed forms to ATF. They did not include the costs associated with certain information that must be included as part of the application, e.g., fingerprint cards. ATF has provided OMB with the adjusted cost estimates for these forms.

Public Participation

A. Comments Sought

ATF is requesting comments on the proposed rule from all interested persons. ATF is also specifically requesting comments on the clarity of this proposed rule and how it may be made easier to understand, as well as 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 the docket number (ATF 41P), be legible, and include the commenter's name and complete mailing address. ATF will treat all comments as originals and will not acknowledge receipt of comments.

Comments received on or before the closing date will be carefully considered. Comments received after that date will be given the same consideration if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before the closing date.

B. Confidentiality

Comments, whether submitted electronically or on paper, will be made available for public viewing at ATF, and on the Internet as part of the eRulemaking initiative, and are subject to the Freedom of Information Act. Commenters who do not want their name or other personal identifying information posted on the Internet should submit their comment by mail or facsimile, along with a separate cover sheet that contains their personal identifying information. Both the cover sheet and comment must reference this docket number (ATF 41P). Information contained in the cover sheet will not be posted on the Internet. Any personal identifying information that appears within the comment will be posted on the Internet and will not be redacted by ATF.

Any material that the commenter considers to be inappropriate for disclosure to the public should not be included in the comment. Any person submitting a comment shall specifically designate that portion (if any) of his comments that contains material that is confidential under law (e.g., trade secrets, processes). Any portion of a comment that is confidential under law shall be set forth on pages separate from the balance of the comment and shall be prominently marked "confidential" at the top of each page.

Confidential information will be included in the rulemaking record but will not be disclosed to the public. Any comments containing material that is not confidential under law may be disclosed to the public. In any event, the name of the person submitting a comment is not exempt from disclosure.

C. Submitting Comments

Comments may be submitted in any of three ways:

- *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 (.17 inches), include your mailing address, be signed, and may be of any length.

- *Facsimile:* You may submit comments by facsimile transmission to (202) 648-9741. Faxed comments must:

- (1) Be legible and appear in minimum 12 point font size (.17 inches);
- (2) Be on 8½" x 11" paper;
- (3) Contain a legible, written signature; and
- (4) Be no more than five pages long. ATF will not accept faxed comments that exceed five pages.

- *Federal eRulemaking Portal:* To submit comments to ATF via the Federal eRulemaking portal, visit <http://www.regulations.gov> and follow the instructions for submitting comments.

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 of ATF 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 will be available for public inspection through the Federal eGovernment portal, <http://www.regulations.gov>, or by appointment during normal business hours at the ATF Reading Room, Room 1E-062, 99 New York Avenue, NE., Washington, DC 20226; telephone: (202) 648-8740.

Drafting Information

The author of this document is Brenda Raffath Friend, Office of Regulatory Affairs, Enforcement Programs and Services, Bureau of Alcohol, Tobacco, Firearms, and Explosives.

List of Subjects in 27 CFR Part 479

Administrative practice and procedure, Arms and munitions, Authority delegations, Customs duties and inspection, Exports, Imports, Military personnel, Penalties, Reporting and recordkeeping requirements, Research, Seizures and forfeitures, and Transportation.

Authority and Issuance

Accordingly, for the reasons discussed in the preamble, 27 CFR part 479 is proposed to be amended as follows:

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

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

Authority: 26 U.S.C. 5812; 26 U.S.C. 5822; 26 U.S.C. 7805.

2. In § 479.11, revise the definition for “Person” and add a new definition for the term “Responsible person” to read as follows:

§ 479.11 Meaning of terms.

* * * * *

Person. A partnership, company, association, trust, corporation, including each responsible person associated with such an entity; an estate; or an individual.

* * * * *

Responsible person. (a) In the case of a trust, any individual, including any grantor, trustee, or beneficiary, who possesses, directly or indirectly, the power or authority under any trust instrument or other document, or under state law, to receive, possess, ship, transport, deliver, transfer, or otherwise dispose of a firearm for, or on behalf of, the trust;

(b) In the case of a partnership, any individual, including any partner or manager, who possesses, directly or indirectly, the power or authority under any contract, agreement, article, certificate, bylaw, or instrument, or under state law, to direct the management and policies of the partnership to receive, possess, ship, transport, deliver, transfer, or otherwise dispose of a firearm for, or on behalf of, the partnership;

(c) In the case of an association, any individual, including any member, officer, director, board member, owner, or manager, who possesses, directly or indirectly, the power or authority under any contract, agreement, article, certificate, bylaw, or instrument, or under state law, to direct the management and policies of the association to

receive, possess, ship, transport, deliver, transfer, or otherwise dispose of a firearm for, or on behalf of, the association;

(d) In the case of a company (including a Limited Liability Company (LLC)), any individual, including any member, officer, director, board member, owner, shareholder, or manager, who possesses, directly or indirectly, the power or authority under any contract, agreement, article, certificate, bylaw, or instrument, or under state law, to direct the management and policies of the company to receive, possess, ship, transport, deliver, transfer, or otherwise dispose of a firearm for, or on behalf of, the company; and

(e) In the case of a corporation, any individual, including any officer, director, board member, owner, shareholder, or manager, who possesses, directly or indirectly, the power or authority under any contract, agreement, article, certificate, bylaw, or instrument, or under state law, to direct the management and policies of the corporation to receive, possess, ship, transport, deliver, transfer, or otherwise dispose of a firearm for, or on behalf of, the corporation.

* * * * *

3. Section 479.62 is revised to read as follows:

§ 479.62 Application to make.

(a) *General.* No person shall make a firearm unless the person has filed with the Director a completed application on ATF Form 1 (5320.1), Application to Make and Register a Firearm, in duplicate, executed under the penalties of perjury, to make and register the firearm and has received the approval of the Director to make the firearm, which approval shall effectuate registration of the firearm to the applicant. If the applicant is not a licensed manufacturer, importer, or dealer qualified under this part and

is a partnership, company (including a Limited Liability Company (LLC)), association, trust, or corporation, all information on the Form 1 application shall be furnished for each responsible person of the applicant.

(b) *Preparation of ATF Form 1.* All of the information called for on Form 1 shall be provided, including:

(1) The type of application, i.e., tax paid or tax exempt. If the making of the firearm is taxable, the applicant shall submit a remittance in the amount of \$200 with the application in accordance with the instructions on the form;

(2) The identity of the applicant. If an individual, the applicant shall provide his or her name, address, and date and place of birth, and also comply with the identification requirements prescribed in § 479.63(a). If other than an individual, the applicant shall provide its name, address, and employer identification number, as well as the name and address of each responsible person. Each responsible person of the applicant also shall comply with the identification requirements prescribed in § 479.63(b);

(3) A description of the firearm to be made by type, caliber, gauge or size, model, length of barrel, serial number, other marks of identification, and the name and address of the original manufacturer (if the applicant is not the original manufacturer);

(4) The applicant's Federal firearms license number (if any);

(5) The applicant's special (occupational) tax stamp (if applicable); and

(6) If the applicant (including, if other than an individual, any responsible person) is an alien admitted under a nonimmigrant visa, applicable documentation demonstrating that the nonimmigrant alien falls within an exception to 18 U.S.C. 922(g)(5)(B) under 18 U.S.C. 922(y)(2) or has obtained a waiver of that provision under 18 U.S.C. 922(y)(3).

(c) *Approval of Form 1.* If the application is approved, the Director will affix a National Firearms Act stamp to the original application in the space provided therefor and properly cancel the stamp (see § 479.67). The approved application will then be returned to the applicant.

4. Section 479.63 is revised to read as follows:

§ 479.63 Identification of applicant.

(a) If the applicant is an individual, the applicant shall:

(1) Securely attach to each copy of the Form 1, in the space provided on the form, a photograph of the applicant 2 x 2 inches in size, clearly showing a full front view of the features of the applicant with head bare, with the distance from the top of the head to the point of the chin approximately 1¼ inches, and which shall have been taken within 1 year prior to the date of the application;

(2) Attach to the application two properly completed FBI Forms FD-258 (Fingerprint Card). The fingerprints must be clear for accurate classification and should be taken by someone properly equipped to take them; and

(3) Have a certificate completed on each copy of the Form 1 by the local chief of police, sheriff of the county, head of the state police, state or local district attorney or prosecutor, or such other person whose certificate may in a particular case be acceptable to the Director, for the jurisdiction in which the individual resides. The certificate shall state that the certifying official is satisfied that the fingerprints and photograph accompanying the application are those of the applicant and that the certifying official has no information indicating that possession of the firearm by the maker would be in violation of state or local law.

(b) If the applicant is not a licensed manufacturer, importer, or dealer qualified under this part and is a partnership, company (including a Limited Liability Company (LLC)), association, trust, or corporation, the applicant shall:

(1) Be identified on the Form 1 by the name and exact location of the place of business, including the name and number of the building and street, and the name of the county in which the business is located or, in the case of a trust, the address where the firearm is located. In the case of two or more locations, the address shown shall be the principal place of business (or principal office, in the case of a corporation) or, in the case of a trust, the principal address at which the firearm is located;

(2) Except as provided in paragraph (c) of this section, attach to the application—

(i) Documentation evidencing the existence and validity of the entity, which includes complete and unredacted copies of partnership agreements, articles of incorporation, corporate registration, declarations of trust with any trust schedules, attachments, exhibits, and enclosures;

(ii) A completed ATF Form 5320.23 for each responsible person. Form 5320.23 requires certain identifying information, including each responsible person's full name, position, social security number (optional), home address, date and place of birth, and country of citizenship;

(iii) In the space provided on Form 5320.23, a photograph of each responsible person 2 x 2 inches in size, clearly showing a full front view of the features of the responsible person with head bare, with the distance from the top of the head to the point of the chin approximately 1 ¼ inches, and which shall have been taken within 1 year prior to the date of the application;

(iv) Two properly completed FBI Forms FD-258 (Fingerprint Card) for each responsible person. The fingerprints must be clear for accurate classification and should be taken by someone properly equipped to take them; and

(v) In the space provided on Form 5320.23, a certificate completed by the local chief of police, sheriff of the county, head of the state police, state or local district attorney or prosecutor, or such other person whose certificate may in a particular case be acceptable to the Director, for the jurisdiction in which the responsible person resides. The certificate shall state that the certifying official is satisfied that the fingerprints and photograph accompanying the form are those of the responsible person and that the certifying official has no information indicating that possession of the firearm by the responsible person would be in violation of state or local law.

(c) If the applicant entity has had an application approved as a maker or transferee within the preceding 24 months, and there has been no change to the documentation previously provided, the entity may provide a certification that the information has not been changed since the prior approval and shall identify the application for which the documentation had been submitted by form number, serial number, and date approved.

5. Section 479.84 is revised to read as follows:

§ 479.84 Application to transfer.

(a) *General.* Except as otherwise provided in this subpart, no firearm may be transferred in the United States unless an application, Form 4 (5320.4), Application for Tax Paid Transfer and Registration of Firearm, in duplicate, executed under the penalties of perjury, to transfer the firearm and register it to the transferee has been filed with and approved by the Director. The application shall be filed by the transferor. If the

transferee is not a licensed manufacturer, importer, or dealer qualified under this part and is a partnership, company (including a Limited Liability Company (LLC)), association, trust, or corporation, all information on the Form 4 application shall be furnished for each responsible person of the transferee.

(b) *Preparation of ATF Form 4.* All of the information called for on Form 4 shall be provided, including:

(1) The type of firearm being transferred. If the firearm is other than one classified as “any other weapon,” the applicant shall submit a remittance in the amount of \$200 with the application in accordance with the instructions on the form. If the firearm is classified as “any other weapon,” the applicant shall submit a remittance in the amount of \$5;

(2) The identity of the transferor by name and address and, if the transferor is other than a natural person, the title or legal status of the person executing the application in relation to the transferor;

(3) The transferor’s Federal firearms license number (if any);

(4) The transferor’s special (occupational) tax stamp (if any);

(5) The identity of the transferee by name and address and, if the transferee is a person not qualified as a manufacturer, importer, or dealer under this part, the transferee shall be further identified in the manner prescribed in § 479.85;

(6) The transferee’s Federal firearms license number (if any);

(7) The transferee’s special (occupational) tax stamp (if any); and

(8) A description of the firearm to be transferred by name and address of the manufacturer or importer (if known); caliber, gauge, or size; model; serial number; in the

case of a short-barreled shotgun or a short-barreled rifle, the length of the barrel; in the case of a weapon made from a rifle or shotgun, the overall length of the weapon and the length of the barrel; and any other identifying marks on the firearm. In the event the firearm does not bear a serial number, the applicant shall obtain a serial number from ATF and shall stamp (impress) or otherwise conspicuously place such serial number on the firearm in a manner not susceptible of being readily obliterated, altered, or removed.

(9) If the applicant (including, if other than an individual, any responsible person) is an alien admitted under a nonimmigrant visa, applicable documentation demonstrating that the nonimmigrant alien falls within an exception to 18 U.S.C. § 922(g)(5)(B) under 18 U.S.C. 922(y)(2) or has obtained a waiver of that provision under 18 U.S.C. 922(y)(3).

(c) *Approval of Form 4.* If the application is approved, the Director will affix a National Firearms Act stamp to the original application in the space provided therefor and properly cancel the stamp (see § 479.87). The approved application will then be returned to the transferor.

6. Section 479.85 is revised to read as follows:

§ 479.85 Identification of transferee.

(a) If the transferee is an individual, such person shall:

(1) Securely attach to each copy of the Form 4, in the space provided on the form, a photograph of the applicant 2 x 2 inches in size, clearly showing a full front view of the features of the applicant with head bare, with the distance from the top of the head to the point of the chin approximately 1¼ inches, and which shall have been taken within 1 year prior to the date of the application;

(2) Attach to the application two properly completed FBI Forms FD-258 (Fingerprint Card). The fingerprints must be clear for accurate classification and should be taken by someone properly equipped to take them; and

(3) Have a certificate completed on each copy of the Form 4 by the local chief of police, sheriff of the county, head of the state police, state or local district attorney or prosecutor, or such other person whose certificate may in a particular case be acceptable to the Director, for the jurisdiction in which the individual resides. The certificate shall state that the certifying official is satisfied that the fingerprints and photograph accompanying the application are those of the applicant and that the certifying official has no information indicating that receipt or possession of the firearm by the transferee would be in violation of state or local law.

(b) If the transferee is not a licensed manufacturer, importer, or dealer qualified under this part and is a partnership, company, association, trust, or corporation, such person shall:

(1) Be identified on the Form 4 by the name and exact location of the place of business, including the name and number of the building and street, and the name of the county in which the business is located or, in the case of a trust, the address where the firearm is located. In the case of two or more locations, the address shown shall be the principal place of business (or principal office, in the case of a corporation) or, in the case of a trust, the principal address at which the firearm is located;

(2) Except as provided in paragraph (c) of this section, attach to the application—

(i) Documentation evidencing the existence and validity of the entity, which includes complete and unredacted copies of partnership agreements, articles of

incorporation, corporate registration, declarations of trust with any trust schedules, attachments, exhibits, and enclosures;

(ii) A completed ATF Form 5320.23 for each responsible person. Form 5320.23 requires certain identifying information, including the responsible person's full name, position, social security number (optional), home address, date and place of birth, and country of citizenship;

(iii) In the space provided on Form 5320.23, a photograph of each responsible person 2 x 2 inches in size, clearly showing a full front view of the features of the responsible person with head bare, with the distance from the top of the head to the point of the chin approximately 1¼ inches, and which shall have been taken within 1 year prior to the date of the application;

(iv) Two properly completed FBI Forms FD-258 (Fingerprint Card) for each responsible person. The fingerprints must be clear for accurate classification and should be taken by someone properly equipped to take them; and

(v) In the space provided on Form 5320.23, a certificate completed by the local chief of police, sheriff of the county, head of the state police, state or local district attorney or prosecutor, or such other person whose certificate may in a particular case be acceptable to the Director, for the jurisdiction in which the responsible person resides. The certificate shall state that the certifying official is satisfied that the fingerprints and photograph accompanying the form are those of the responsible person and that the certifying official has no information indicating that receipt or possession of the firearm by the transferee would be in violation of state or local law.

(c) If the applicant entity has had an application approved as a maker or transferee within the preceding 24 months, and there has been no change to the documentation previously provided, the entity may provide a certification that the information has not been changed since the prior approval and shall identify the application for which the documentation had been submitted by form number, serial number, and date approved.

7. Section 479.90(b) is revised by removing the word “natural” in the third sentence.

8. Section 479.90a is added to subpart F to read as follows.

§ 479.90a Estates.

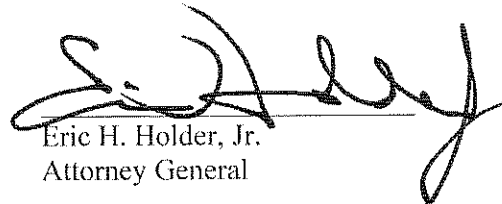
(a) The executor, administrator, personal representative, or other person authorized under state law to dispose of property in an estate (collectively “executor”) may possess a firearm registered to a decedent during the term of probate without such possession being treated as a “transfer” as defined in § 479.11. No later than the close of probate, the executor must submit an application to transfer the firearm to beneficiaries or other transferees in accordance with this section. If the transfer is to a beneficiary, the executor shall file an ATF Form 5 (5320.5), Application for Tax Exempt Transfer and Registration of Firearm, to register a firearm to any beneficiary of an estate in accordance with § 479.90. The executor will identify the estate as the transferor, and will sign the form on behalf of the decedent, showing his or her title and the date of filing. The executor must also provide the documentation prescribed in paragraph (c) of this section.

(b) If there are no beneficiaries of the estate or the beneficiaries do not wish to possess the registered firearm, the executor will dispose of the property outside the estate (i.e., to a non-beneficiary). The executor shall file an ATF Form 4 (5320.4), Application

for Tax Paid Transfer and Registration of Firearm, in accordance with § 479.84. The executor, administrator, personal representative, or other authorized person must also provide documentation prescribed in paragraph (c) of this section.

(c) The executor, administrator, personal representative, or other person authorized under state law to dispose of property in an estate shall submit with the transfer application documentation of his or her appointment as executor, administrator, personal representative, or as an authorized person, a copy of the decedent's death certificate, a copy of the will (if any), any other evidence of his or her authority to dispose of property, and any other document relating to, or affecting the disposition of firearms from the estate.

Aug. 29, 2013
Date


Eric H. Holder, Jr.
Attorney General